

# Position Statement

## For 2022 Session

### Competency Restoration

#### Proposal

##### Issue:

Currently, no law in Minnesota requires that any state or local agency provide competency restoration to a defendant found incompetent to stand trial under Minnesota Rule of Criminal Procedure 20.01.

Similarly, no law requires such an individual to participate in or undergo competency restoration. Nearly the entirety of existing regulation surrounding competency is found in Minn. R. Crim. P. 20.01. As a criminal court rule, Rule 20.01 applies only to the parties in a criminal case and does not have the force of statutory law. Moreover, even Rule 20.01 itself does not require that competency services be provided to an incompetent defendant, or that the defendant participate in competency restoration when they are found incompetent.

Further, Minnesota's current patchwork system requires the involvement of two courts (criminal and civil/mental health), which lends itself to confusion, inefficiencies, and lack of communication. Most other states across the US address competency and competency restoration directly through the criminal court.

One major issue that must be addressed in a new competency statute and structure is that of funding. Even those parts of the system that are currently at least partially operational, such as inpatient competency restoration services offered at DHS programs, are not funded in such a way that they could accommodate significant increases in referrals without overwhelming the system.

##### Implementation Strategy:

MACSSA recommends a statute governing competency to stand trial to be drafted and passed into law. The statute should lay out not only the process for directing defendants to competency restoration services, but also the continuum of where and how such services should be offered and to which populations. It would also be important for a competency statute to address defendants who are not restorable and those who do not meet civil commitment criteria, and to include a competency program which is flexible enough for many uses.

Forensic navigators may also be a useful tool to assist in smooth and prompt disposition planning and discharge. Such individuals can assist patients in making the transition to a community setting, linking them to community services/supports and can aid defendants in understanding next steps in the criminal justice process.

A successful Minnesota competency statute and system therefore will have to be accompanied by a significant investment in funding. MACSSA would recommend that the Courts be responsible for this new system and would need increased funding to carry out this new statute.

## Systemic Priority Alignment (highlight all that apply and explain why)

- Equity
- Integrated Services
- Fiscal Framework

From the GARE Toolkit (See [www.racialequityalliance.org](http://www.racialequityalliance.org)): What are the racial equity impacts of this particular decision? Who will benefit from or be burdened by it? Are there strategies to mitigate unintended consequences?

**Comments:** The mental health system is not readily accessible to meet the demand of mental health treatment in Minnesota, it is unavailable in many parts of rural Minnesota, and it is especially difficult for Black, indigenous, and people of color (BIPOC) to safely and comfortably access. Integrated and innovative services across the mental health continuum must be fully funded and supported if they are going to meaningfully address the issue of the criminalization of mental illnesses “upstream,” before criminal justice involvement is a possibility or necessity. The historical discrimination against people with mental illnesses in healthcare systems has in part created the overrepresentation of people with mental illnesses in the criminal justice system.

## Relevant Committee (highlight all that apply and explain why)

- Adult Services
- Behavioral Health
- Children’s Services
- Modernization
- Policy
- Self-Sufficiency

### Why:

This priority aims to recognize that there has been a nationwide increase in the number of individuals with behavioral health disorders in the criminal justice system. It also recognizes that reforms must be made to our own behavioral health systems and services to meet the increasing demands in our state, to provide timely competency evaluations and restoration services. MACSSA acknowledges the work of the Competency Restoration Taskforce to establish a road map and framework for proposed systemic reforms to the forensic mental health care system. It is the intent to engage with stakeholders and community partners to address the needs of this vulnerable population, and to ensure that the public safety needs of our communities are met.

## Rationale/Background:

The Competency Restoration Taskforce reported to the legislation in 2021 recommendations regarding the most effective ways for Minnesota to address the growing number of individuals deemed incompetent to stand trial. This report contains recommendations to create new statutory language to effectively address the process of being deemed incompetent and restored to competency, to increase diversion of individuals with mental illnesses away from the criminal justice system, and to reduce the time individuals with mental illnesses spend in the criminal justice system. Importantly, the task force highlights that neither mental health care nor criminal justice involvement should be isolated from looking at the whole of an individual’s life, including ensuring that their basic needs are met and that they have access to social and community supports.



**MACSSA**  
Minnesota Association of County  
Social Service Administrators

Submitted by: Behavioral Health Committee 11/4/21

Approved on: