

Juvenile Capacity to Proceed

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Skills/Abilities
needed to be
capable to
proceed

Juvenile capacity statutes:
7B-2401.1-2401.5

Able to: Understand nature and
object of proceedings

Comprehend own
situation in reference to
proceedings, or

Assist in defense in
rational or reasonable
manner

REASON FOR INABILITY:

mental disorder,

intellectual disability,

neurological disorder,

traumatic or acquired brain injury, or

developmental immaturity.

Mandate for Judicial Inquiry Regarding Capacity to Proceed

- ✓ In every case in which the juvenile is younger than 12
- ✓ First time the juvenile appears in court



Capacity cannot be raised in
mandatory transfer cases until
AFTER transfer



Forensic Evaluations

Order for forensic evaluation stays
all proceedings except for hearings
on the ongoing need for secure or
nonsecure custody

G.S. 7B-2401.2(g)



Forensic Evaluation Must Include

Capacity to

Appreciate allegations

Appreciate range and nature of allowable dispositions

Understand participant roles and adversarial nature of process

Disclose pertinent facts to counsel

Display appropriate courtroom behavior

Testify regarding relevant issues

Make reasonable and rational decisions

Assist in defense in rational manner

Any other factors evaluator deems relevant

Capacity Hearing

Required when
capacity is raised

Parties can
stipulate to having
capacity

Can only find
incapable to
proceed after a
hearing

Juvenile bears
burden of proof by
a preponderance
of the evidence

G.S. 7B-2401.2(h)

Capable to proceed

- Prosecution resumes

Not capable to proceed and not substantially likely to attain capacity in the foreseeable future

- Dismissal
- Can pursue IVC

Not capable to proceed and not substantially likely to attain capacity in the foreseeable future

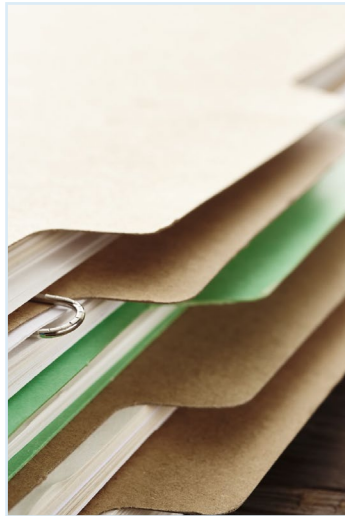
- May order remediation

Capacity Hearing Outcomes

What?



Mental health treatment
and/or psychoeducational
programming



Based on
recommendations in
forensic evaluation

Where?

Least Restrictive Environment Considering

- Whether there is PC
- Nature of incapacity
- Age or developmental maturity
- Nature and seriousness of allegations
- Availability and appropriateness of community-based programming
- Need for supervision; community-based supervision or alternatives (e.g. family, caregivers, programs)
- Prior treatment or interventions
- Any other relevant factors

Secure Custody Possible if:

- Court finds is the least restrictive environment
- Criteria for secure custody in 7B-1903 are met

IVC possible if

- Mental disorder, intellectual disability, neurological disorder, or traumatic or acquired brain injury is basis for incapacity
- Substantially likely to attain capacity
- Less restrictive alternatives are inappropriate
- IVC procedure followed

Maximum time for secure confinement

- Equal to maximum time limit for remediation

REMEDIATION TIME LIMITS

G.S. 7B-2401.4(f)

Most serious offense alleged	Remediation time limit
First-degree murder, forcible rape, statutory rape, forcible sexual offense, or statutory sexual offense	The sooner of 36 months from the finding of incapacity or the maximum jurisdiction of the juvenile court
Any other Class B1 – E felony	The sooner of 12 months from the finding of incapacity or the maximum jurisdiction of the juvenile court. An extension of 12 months can be granted for <i>good cause</i> . Remediation can never extend beyond the sooner of 24 months from the finding of incapacity or the maximum jurisdiction of the juvenile court.
Class F – I felony or misdemeanor	The sooner of 6 months from the finding of incapacity or the maximum jurisdiction of the juvenile court. An extension of 6 months can be granted. Remediation can never extend beyond the sooner of 12 months from the finding of incapacity or the maximum jurisdiction of the juvenile court.

Remediation Reports to the Court

From remediation service provider

Every 90 days

Including:

- dates services were provided to the juvenile,
- a summary of the juvenile's attendance and participation, and
- information about the juvenile's progress in the areas relevant to the finding of incapacity, including psychoeducation and stabilization or improvement of symptoms leading to functional impairment

Remediation Review Hearings



Within 30 days of receiving remediation report



To review remediation services



Informal

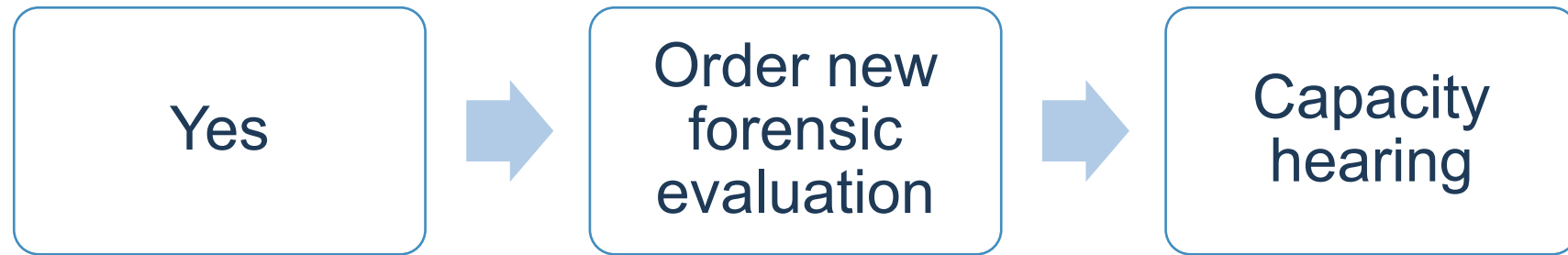


Any evidence that is relevant, reliable, and necessary

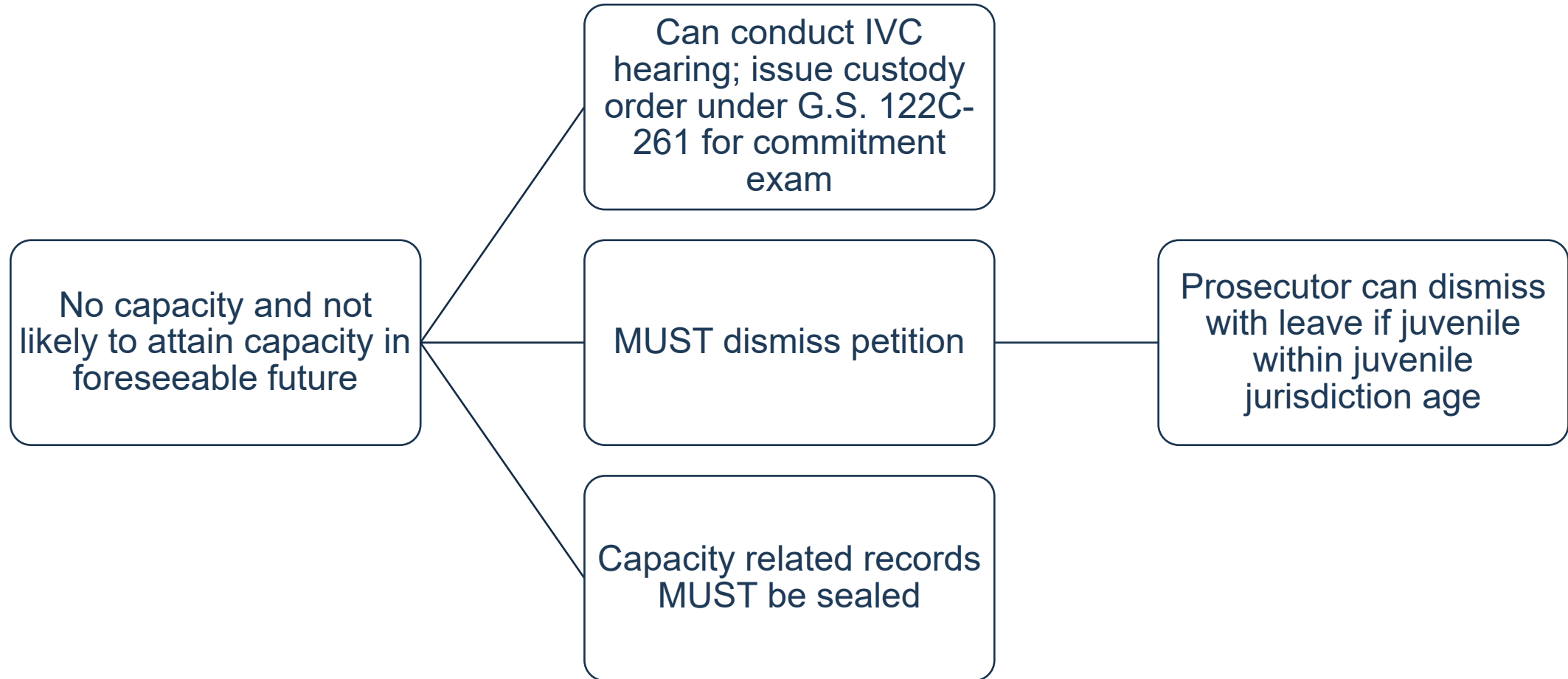


Should remediation continue or is reassessment of capacity warranted?

Is reassessment of capacity warranted?



G.S. 7B-2401.4(h)



G.S. 7B-2401.5



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