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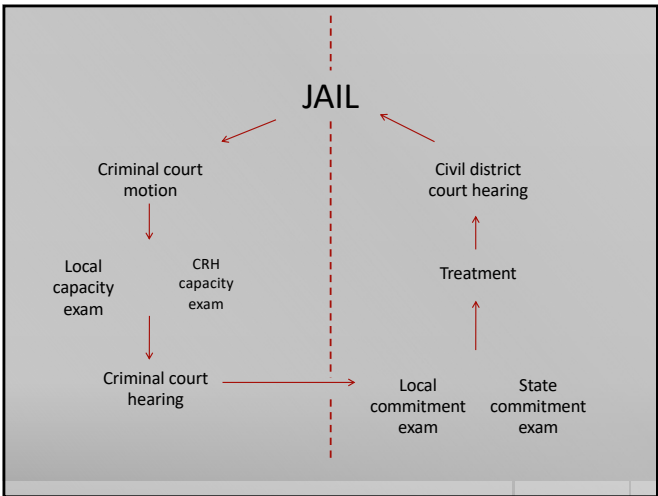
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## Roadmap for today

- How we got here
- What the future may hold
- What you can and can't do now

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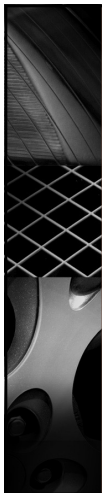
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## How We Got Here

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## Jackson v. Indiana, 406 U.S. 715 (1972)

“[A] person charged . . . with a criminal offense who is committed solely on account of his incapacity to proceed to trial cannot be held more than the reasonable period of time necessary to determine whether there is a substantial probability that he will attain that capacity in the foreseeable future. If it is determined that this is not the case, then the State must either institute the customary civil commitment proceeding that would be required to commit indefinitely any other citizen, or release the defendant.”

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## NC's Response

- Commentary to GS 15A-1001 to 15A-1009 (part of 1973 Criminal Procedure Act)
  - "In order to accomplish these requirements [from *Jackson v. Indiana*], this draft provides that when the trial court determines that the defendant does not have capacity to proceed, it will turn him over . . . for civil commitment proceedings."
- 1981: House Bill 95 (SL 1981-537)
  - For offenses considered "violent," additional procedures apply that require state hospital commitment, continuous custody, and court hearings before release

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## NC's Response (cont'd)

- SL 1989-486
  - Local capacity exam for misdemeanors required before state exam
- SL 1995-299
  - Local capacity exam for felonies preferred but not required
- SL 2013-18
  - Only a local capacity exam for misdemeanors
  - Reporting requirements about criminal capacity after commitment
  - Deadlines for action, including mandatory dismissal

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## Media Coverage



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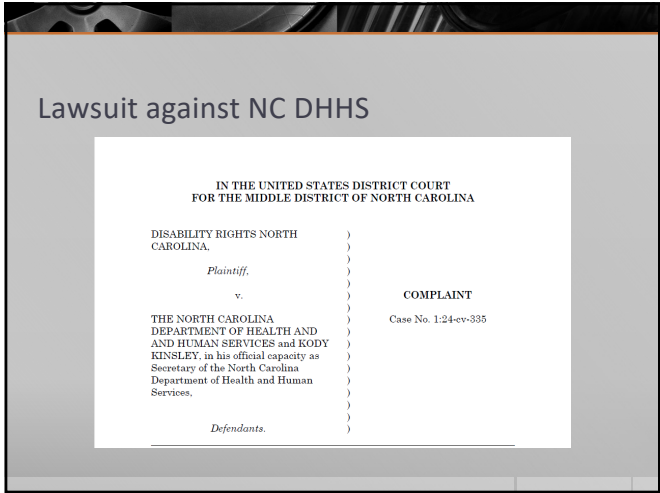
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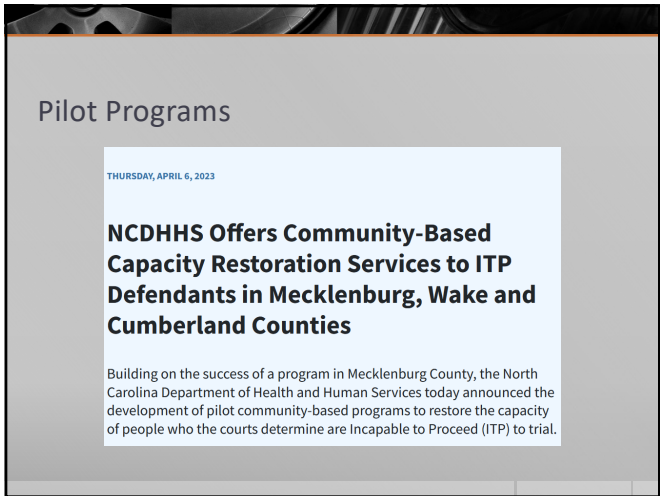
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## Possible Legislation

- Capacity restoration
  - Create statutory authorization for capacity restoration separate from civil commitment
  - Placement in least restrictive setting

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## Work Groups

- Conditional discharge
  - NGRI acquittees
  - Forensic monitors
  - Court review

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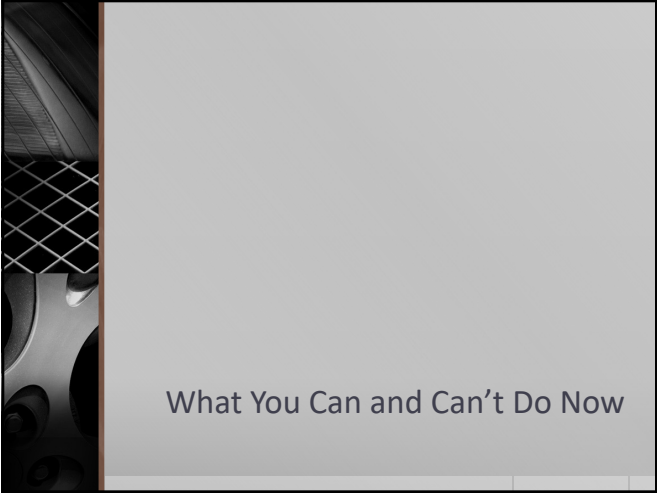
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## What You Can and Can't Do Now

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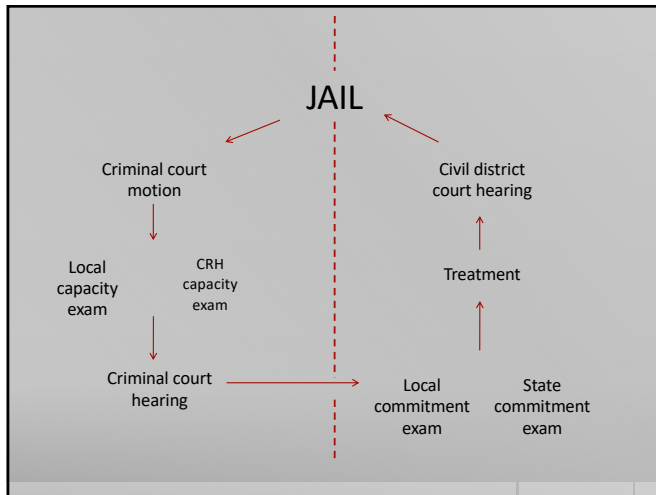
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### Capacity Proceedings

- Incapacity can be determined without capacity exam. 15A-1002(b)(1)
- State exam not statutorily authorized for misdemeanors. 15A-1002(b)(1a)
- Deadline for submission of capacity report. 15A-1002(b2)
- Pretrial release is permissible. 15A-1004(b)
- Dismissal is mandatory in three instances. 15A-1008

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### G.S. 15A-1008

- When a defendant lacks capacity to proceed, the court shall dismiss the charge if
  1. it appears the defendant will not gain capacity
  2. the defendant has been confined for the maximum term for the most serious offense, or
  3. five years have elapsed in a misdemeanor case and ten years have elapsed in a felony case after a finding of incapacity

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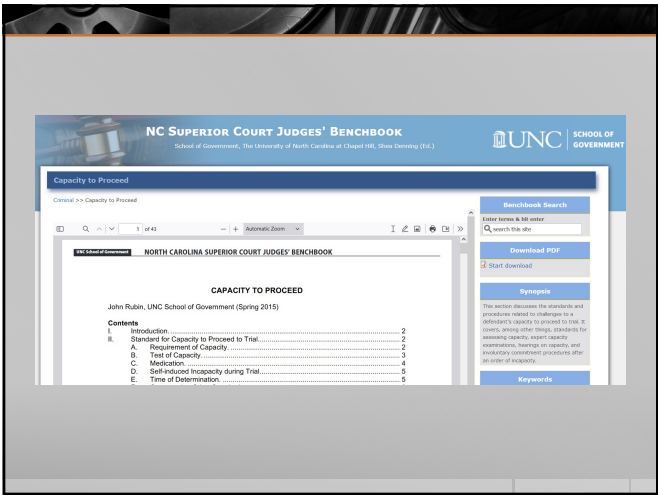
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## Following Incapacity Determination

- Defendant must meet standard for commitment. 15A-1003(a)
- Definition of violent offense is specific. 15A-1003(a); *In re Murdock*, 222 N.C. App. 45 (2012)
- DA must calendar supplemental capacity hearing by deadline. 15A-1007(a)
- Trial must be earliest practicable time. 15A-1007(d)
- Pretrial release is permissible. 15A-1004(b)
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# Questions?

- You can reach me at [rubin@sog.unc.edu](mailto:rubin@sog.unc.edu)
  - It works in London
- You cannot reach me on my office or US mobile phone until the second week of July
  - They don't work in London
- You can use WhatsApp to text or even call me
  - Ask your children how it works

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