

Juvenile Capacity to Proceed Hearings

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Requirement of Capacity

- A juvenile who lacks the mental capacity to proceed may not be tried or punished in juvenile court.
 - NC law
 - 7B-2401, 15A-1001, 15A-1002, 15A-1003
 - Due Process
 - *Drope v. Missouri*, 420 U.S. 162 (1975)



If a juvenile lacks capacity

- The court cannot
 - conduct adjudication or disposition hearings
- The court can
 - hear pre-trial motions the juvenile’s attorney can handle without the juvenile’s assistance
 - G.S. 15A-1001(b)
 - *Jackson v. Indiana*, 406 U.S. 715, 740-41 (1972)
 - Enter temporary custody orders pending capacity hearing or civil commitment proceedings
 - G.S. 15A-1002(c)



Standard for Capacity to Proceed

A juvenile lacks capacity to proceed if, **by reason of mental illness or defect**, he/she is unable to:

1. understand the nature and object of the proceedings;
2. comprehend his/her own situation in reference to the proceedings; **or**
3. assist in his/her defense in a rational or reasonable manner.



The “Dusky” Standard

- The test is whether a defendant has “a rational as well as factual understanding of the proceedings against him” and “sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding.”
 - *State v. LeGrande*, 346 N.C. 718, 724 (1997)
 - Quoting *Dusky v. U.S.*, 362 U.S. 402 (1960) (per curiam)



Standard for Capacity to Proceed

- Same as standard for capacity to enter an admission (*i.e.*, plead guilty).
 - *Godinez v. Moran*, 509 U.S. 389, 398 (1993)
- If juvenile lacks capacity to proceed to trial, juvenile cannot enter an admission.



Developmental Immaturity

- Statutory ground for incapacity in some states
 - AZ, AR, CA, CO, FL, GA, ID, ME, OK, etc...
- Not yet in NC



Juvenile incompetency is not defined solely “in terms of mental illness or disability,” but also encompasses developmental immaturity, because minors' brains are still developing.

In re John Z., 167 Cal. Rptr. 3d 811, 816 (2014)

Research on Juvenile Capacity

- MacArthur Research Network on Adolescent Development and Juvenile Justice
 - 8 year study by multidisciplinary research group
 - Produced several publications for courts, attorneys, and mental health professionals on juvenile capacity
 - Thomas Grisso, et. al., *Juvenile's Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants*, 27 Law and Human Behavior 333 (2003)
 - Thomas Grisso, *Clinical Evaluations for Juveniles' Competence to Stand Trial: A Guide for Legal Professionals* (2005).
- See handout on “Legal Questions About Youth’s Capacities” for summary of research



Raising the Question of Capacity

- By motion of a party or court, at any time.
 - Funds to hire private expert (AOC-G-309)
 - Local examiner (AOC-CR-207A or AOC-CR-207B)
- Must detail specific conduct or information
 - G.S. 15A-1002(a)
 - *State v. Taylor*, 298 N.C. 405 (1979) (motion must contain sufficient detail to cause “prudent judge” to call for psychiatric examination before determining capacity)
- Court may appoint “one or more impartial experts”



“Bona Fide Doubt” Inquiry

- Court must initiate capacity hearing on its own when there is a *bona fide doubt* about the juvenile’s capacity to proceed.
 - *State v. Staten*, 172 N.C. App. 673, 678 (2005).
- Only if there is “substantial evidence” before the court.
 - irrational behavior or demeanor in court
 - mental health history
 - prior finding of incapacity



Examination by Local Examiner or State Facility

Misdemeanors

- Local exams only
- May not be committed to state facility.
 - G.S. 15A-1002(b)(1a)

Felonies

- Local exam
- Admission to state facility \leq 60 days
 - Court may bypass local exam if it finds state facility is more appropriate.
 - G.S. 15A-1002(b)(2)



Providing Information to Examiner

- Court must order the release of “relevant confidential information” to examiner
 - Juvenile petitions
 - Secure custody orders
 - Delinquency history
 - Law enforcement reports
 - Prior medical or mental health records
- Subject to any applicable federal laws
 - re: treatment for substance abuse, communicable diseases
 - May conduct in camera review



Examiner's Report

- Time limits apply. See G.S. 15A-1002(b2)
 - May be extended by court for good cause but extensions may not exceed 120 days
- Full report goes to:
 - Presiding judge
 - Defense counsel
 - DJJ gets copy of cover statement if child in custody
- Prosecutor gets copy only if issue of capacity is raised at hearing.



Hearings on Capacity to Proceed

- A hearing “shall” be held after a court-ordered capacity examination.
 - G.S. 15A-1002(b)(1)
- Not reversible error *per se* if court fails to hold hearing.
 - *In re C.B.*, (2014) (unpublished) (no denial of due process by court’s failure to hold capacity hearing where capacity exam found juvenile to be capable of proceeding and counsel failed to request hearing).
 - **NOT BEST PRACTICE**



Hearings on Capacity to Proceed

Evidentiary Issues

- Examiner’s report is admissible
 - G.S. 15A-1002(b)(1a), -1002(b)(2)
- Rules of evidence are relaxed
 - but evidence must be admissible
- Juvenile must have opportunity to present evidence
- Stipulations okay as to capacity but not as to incapacity

Findings of Fact

- Better practice is for court to make own findings of fact
- But not prejudicial for trial court to adopt examiner’s findings
 - *State v. Coley*, 193 N.C. App. 458 (2008)



Burden of Proof

- Juvenile has burden to prove incapacity
 - *In re H.D.*, 184 N.C. App. 188, 645 S.E.2d 901 (2007) (unpublished) (The juvenile has the burden of proof to show incapacity to proceed.)
- By preponderance of the evidence
 - See *Cooper v. Oklahoma*, 517 U.S. 348 (1996)
 - *State v. Moss*, 178 N.C. App. 393 (2006) (unpublished) (following Cooper)
 - Higher standard would violate due process



Expert Opinion

- Cannot testify as to ultimate legal conclusion that a juvenile lacks capacity
- Can only give opinion as to whether juvenile can perform required functions in 15A-1001(a)
 - *State v. Smith*, 310 N.C. 108 (1984)
 - *In re H.D.*, 184 N.C. App. 188 (2007)
- Lay witnesses can give relevant opinion, if admissible under Rule 701



Capacity is a Legal Conclusion for the Court



- Judge must resolve conflicts in evidence and
- Make a conclusion based upon appropriate findings of fact



If court finds incapacity to proceed,
what's next?



Options for Juveniles Who Lack Capacity to Proceed

- Dismissal
- Non-secure custody pending hearing
 - Kinship placement
 - DSS custody
 - Other approved placement
- Diversion
 - Reduce charge to lesser, divertible offense
- Refer to local LME/MCO (G.S. 7B-2502)
- Involuntary Commitment (G.S. 15A-1003)
 - AOC-SP-304A or AOC-SP-304B



The Default Option



Indefinite confinement of criminal defendant who lacks capacity to proceed violates due process, unless defendant is civilly committed.

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

Questions?

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