

Relevant Statutory Provisions

Capacity to Proceed

G.S. 7B-2401. Determination of incapacity to proceed; evidence; temporary commitment; temporary orders. The provisions of G.S. 15A-1001, 15A-1002, and 15A-1003 apply to all cases in which a juvenile is alleged to be delinquent. No juvenile committed under this section may be placed in a situation where the juvenile will come in contact with adults committed for any purpose.

G.S. 15A-1001. No proceedings when defendant mentally incapacitated; exception.

(a) No person may be tried, convicted, sentenced, or punished for a crime when by reason of mental illness or defect he is unable to understand the nature and object of the proceedings against him, to comprehend his own situation in reference to the proceedings, or to assist in his defense in a rational or reasonable manner. This condition is hereinafter referred to as "incapacity to proceed."

(b) This section does not prevent the court from going forward with any motions which can be handled by counsel without the assistance of the defendant.

G.S. 15A-1002. Determination of incapacity to proceed; evidence; temporary commitment; temporary orders.

(a) The question of the capacity of the defendant to proceed may be raised at any time on motion by the prosecutor, the defendant, the defense counsel, or the court. The motion shall detail the specific conduct that leads the moving party to question the defendant's capacity to proceed.

(b) (1) When the capacity of the defendant to proceed is questioned, the court shall hold a hearing to determine the defendant's capacity to proceed. If an examination is ordered pursuant to subdivision (1a) or (2) of this subsection, the hearing shall be held after the examination. Reasonable notice shall be given to the defendant and prosecutor, and the State and the defendant may introduce evidence.

(1a) In the case of a defendant charged with a misdemeanor or felony, the court may appoint one or more impartial medical experts, including forensic evaluators approved under rules of the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services, to examine the defendant and return a written report describing the present state of the defendant's mental health. Reports so prepared are admissible at the hearing. The court may call any expert so appointed to testify at the hearing with or without the request of either party.

(2) At any time in the case of a defendant charged with a felony, the court may order the defendant to a State facility for the mentally ill for observation and treatment for the period, not to exceed 60 days, necessary to determine the defendant's capacity to proceed. If a defendant is

ordered to a State facility without first having an examination pursuant to subsection (b)(1a) of this section, the judge shall make a finding that an examination pursuant to this subsection would be more appropriate to determine the defendant's capacity. The sheriff shall return the defendant to the county when notified that the evaluation has been completed. The director of the facility shall direct his report on defendant's condition to the defense attorney and to the clerk of superior court, who shall bring it to the attention of the court. The report is admissible at the hearing.

(3) Repealed by Session Laws 1989, c. 486, s. 1.

(4) A presiding district or superior court judge of this State who orders an examination pursuant to subdivision (1a) or (2) of this subsection shall order the release of relevant confidential information to the examiner, including, but not limited to, the warrant or indictment, arrest records, the law enforcement incident report, the defendant's criminal record, jail records, any prior medical and mental health records of the defendant, and any school records of the defendant after providing the defendant with reasonable notice and an opportunity to be heard and then determining that the information is relevant and necessary to the hearing of the matter before the court and unavailable from any other source. This subdivision shall not be construed to relieve any court of its duty to conduct hearings and make findings required under relevant federal law before ordering the release of any private medical or mental health information or records related to substance abuse or HIV status or treatment. The records may be surrendered to the court for in camera review if surrender is necessary to make the required determinations. G.S. 15A-1002 Page 2 The records shall be withheld from public inspection and, except as provided in this subdivision, may be examined only by order of the court.

(b1) The order of the court shall contain findings of fact to support its determination of the defendant's capacity to proceed. The parties may stipulate that the defendant is capable of proceeding but shall not be allowed to stipulate that the defendant lacks capacity to proceed. If the court concludes that the defendant lacks capacity to proceed, proceedings for involuntary civil commitment under Chapter 122C of the General Statutes may be instituted on the basis of the report in either the county where the criminal proceedings are pending or, if the defendant is hospitalized, in the county in which the defendant is hospitalized.

(b2) Reports made to the court pursuant to this section shall be completed and provided to the court as follows:

(1) The report in a case of a defendant charged with a misdemeanor shall be completed and provided to the court no later than 10 days following the completion of the examination for a defendant who was in custody at the time the examination order was entered and no later than 20 days following the completion of the examination for a defendant who was not in custody at the time the examination order was entered.

(2) The report in the case of a defendant charged with a felony shall be completed and provided to the court no later than 30 days following the completion of the examination.

(3) In cases where the defendant challenges the determination made by the court-ordered examiner or the State facility and the court orders an independent psychiatric examination, that examination and report to the court must be completed within 60 days of the entry of the order by the court. The court may, for good cause shown, extend the time for the provision of the

report to the court for up to 30 additional days. The court may renew an extension of time for an additional 30 days upon request of the State or the defendant prior to the expiration of the previous extension. In no case shall the court grant extensions totaling more than 120 days beyond the time periods otherwise provided in this subsection.

(c) The court may make appropriate temporary orders for the confinement or security of the defendant pending the hearing or ruling of the court on the question of the capacity of the defendant to proceed.

(d) Any report made to the court pursuant to this section shall be forwarded to the clerk of superior court in a sealed envelope addressed to the attention of a presiding judge, with a covering statement to the clerk of the fact of the examination of the defendant and any conclusion as to whether the defendant has or lacks capacity to proceed. If the defendant is being held in the custody of the sheriff, the clerk shall send a copy of the covering statement to the sheriff. The sheriff and any persons employed by the sheriff shall maintain the copy of the covering statement as a confidential record. A copy of the full report shall be forwarded to defense counsel, or to the defendant if he is not represented by counsel. If the question of the defendant's capacity to proceed is raised at any time, a copy of the full report must be forwarded to the district attorney, as provided in G.S. 122C-54(b). Until such report becomes a public record, the full report to the court shall be kept under such conditions as are directed by the court, and its contents shall not be revealed except as directed by the court. Any report made to the court pursuant to this section shall not be a public record unless introduced into evidence.

G.S. 15A-1003. Referral of incapable defendant for civil commitment proceedings.

(a) When a defendant is found to be incapable of proceeding, the presiding judge, upon such additional hearing, if any, as he determines to be necessary, shall determine whether there are reasonable grounds to believe the defendant meets the criteria for involuntary commitment under Part 7 of Article 5 of Chapter 122C of the General Statutes. If the presiding judge finds reasonable grounds to believe that the defendant meets the criteria, he shall make findings of fact and issue a custody order in the same manner, upon the same grounds and with the same effect as an order issued by a clerk or magistrate pursuant to G.S. 122C-261. Proceedings thereafter are in accordance with Part 7 of Article 5 of Chapter 122C of the General Statutes. If the defendant was charged with a violent crime, including a crime involving assault with a deadly weapon, the judge's custody order shall require a law-enforcement officer to take the defendant directly to a 24-hour facility as described in G.S. 122C-252; and the order must indicate that the defendant was charged with a violent crime and that he was found incapable of proceeding.

(b) The court may make appropriate orders for the temporary detention of the defendant pending that proceeding.

(c) Evidence used at the hearing with regard to capacity to proceed is admissible in the involuntary civil commitment proceedings.

Evaluation and Treatment

G.S. 7B-2502. Evaluation and treatment of undisciplined and delinquent juveniles.

(a) In any case, the court may order that the juvenile be examined by a physician, psychiatrist, psychologist, or other qualified expert as may be needed for the court to determine the needs of the juvenile. In the case of a juvenile adjudicated delinquent for committing an offense that involves the possession, use, sale, or delivery of alcohol or a controlled substance, the court shall require the juvenile to be tested for the use of controlled substances or alcohol within 30 days of the adjudication. In the case of any juvenile adjudicated delinquent, the court may, if it deems it necessary, require the juvenile to be tested for the use of controlled substances or alcohol. The results of these initial tests conducted pursuant to this subsection shall be used for evaluation and treatment purposes only. In placing a juvenile in out-of-home care under this section, the court shall also consider whether it is in the juvenile's best interest to remain in the juvenile's community of residence.

(b) Upon completion of the examination, the court shall conduct a hearing to determine whether the juvenile is in need of medical, surgical, psychiatric, psychological, or other evaluation or treatment and who should pay the cost of the evaluation or treatment. The county manager, or any other person who is designated by the chair of the board of county commissioners, of the county of the juvenile's residence shall be notified of the hearing, and allowed to be heard. If the court finds the juvenile to be in need of medical, surgical, psychiatric, psychological, or other evaluation or treatment, the court shall permit the parent, guardian, custodian, or other responsible persons to arrange for evaluation or treatment. If the parent, guardian, or custodian declines or is unable to make necessary arrangements, the court may order the needed evaluation or treatment, surgery, or care, and the court may order the parent to pay the cost of the care pursuant to Article 27 of this Chapter. If the court finds the parent is unable to pay the cost of evaluation or treatment, the court shall order the county to arrange for evaluation or treatment of the juvenile and to pay for the cost of the evaluation or treatment. The county department of social services shall recommend the facility that will provide the juvenile with evaluation or treatment.

(c) If the court believes, or if there is evidence presented to the effect that the juvenile is mentally ill or is developmentally disabled, the court shall refer the juvenile to the area mental health, developmental disabilities, and substance abuse services director for appropriate action. A juvenile shall not be committed directly to a State hospital or mental retardation center; and orders purporting to commit a juvenile directly to a State hospital or mental retardation center except for an examination to determine capacity to proceed shall be void and of no effect. The area mental health, developmental disabilities, and substance abuse director shall be responsible for arranging an interdisciplinary evaluation of the juvenile and mobilizing resources to meet the juvenile's needs. If institutionalization is determined to be the best service for the juvenile, admission shall be with the voluntary consent of the parent, guardian, or custodian. If the parent, guardian, or custodian refuses to consent to a mental hospital or retardation center admission

after such institutionalization is recommended by the area mental health, developmental disabilities, and substance abuse director, the signature and consent of the court may be substituted for that purpose. In all cases in which a regional mental hospital refuses admission to a juvenile referred for admission by the court and an area mental health, developmental disabilities, and substance abuse director or discharges a juvenile previously admitted on court referral prior to completion of the juvenile's treatment, the hospital shall submit to the court a written report setting out the reasons for denial of admission or discharge and setting out the juvenile's diagnosis, indications of mental illness, indications of need for treatment, and a statement as to the location of any facility known to have a treatment program for the juvenile in question.

Relevant Case Law

Burden of Proof

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. Where the only competent evidence, testimony from a licensed clinical social worker who performed a forensic evaluation of the juvenile, demonstrated the juvenile was capable of proceeding, her counsel's statement that he felt the juvenile lacked capacity to proceed was not grounds for reversing the court's order. Trial counsel's statement was not competent evidence and the trial court did not err in ruling that counsel could not testify about the juvenile's capacity unless he withdrew from representation.).

Determination of Capacity

In re I.R.T., 184 N.C. App. 579, 582-83 (2007) (Competent evidence supported the trial court's ruling that the juvenile was competent to stand trial, despite conflicting opinions by two psychologists, where the court's order cited evidence offered by both experts, and the court found, based on second psychologist's report, that the juvenile did not "demonstrate any mental defect that would preclude his capacity to proceed to trial" and could assist his attorney and had the ability to understand legal terms and procedures that are explained in concrete terms).

In re Robinson, 151 N.C. App. 733, 736 (2002) (Competent evidence supported the trial court's ruling that a juvenile, who said during questioning by the police, that the devil made him shoot his mother, had the mental capacity to proceed to trial, despite conflicting expert testimony and evidence that juvenile suffered from moderate mental retardation and schizophreniform disorder, where the trial court's ruling was based on testimony of the third expert, who was chief of forensic psychiatry at a hospital, conducted the court-ordered evaluation of the juvenile and found the juvenile capable of proceeding to trial, and the doctor based his evaluation on interviews with the juvenile, the observation of ward behavior, routine laboratory and medical studies, and a review of the evaluations by other physicians).

Court's Failure to Hold a Hearing

In re C.B., ___ N.C. App. ___, 759 S.E.2d 710 (May 6, 2014) (unpublished) (In a second degree sex offense case, the juvenile was not denied due process by the trial court's failure to hold a hearing on capacity where juvenile had been examined relative to his capacity to proceed and all evidence before the court indicated that he was capable of proceeding. The juvenile's attorney moved for a capacity evaluation of the juvenile based on his history of ADHD, oppositional defiant disorder, mood disorder, and other behavioral problems but failed to request a hearing. The expert's report found that the juvenile was "competent to proceed to trial.").

State v. Rouse, 339 N.C. 59 (1994) (Counsel moved for examination during trial, but motion did not specifically request hearing and did not genuinely call defendant's capacity into question).

But see State v. McGee, 56 N.C. App. 614 (1982) (Defendant's convictions for second degree murder and assault were vacated based on the court's failure to hold a rehearing on the issue of capacity. Following the first capacity hearing where two experts testified that defendant lacked capacity, the trial court ordered defendant to be recommitted to Dorothea Dix for further evaluation and treatment. When the capacity hearing reconvened, the court found that defendant was capable of proceeding. However, before defendant could be tried, he was recommitted to Dix for further observation and treatment based on the court's finding that he "may be incapable of proceeding in this case." Defendant was subsequently tried and convicted without any further determination of his capacity to proceed. The appellate court found that in recommitting defendant to Dorothea Dix, the trial court established a presumption that he was incapable of proceeding, and thus, further hearing on the issue of defendant's capacity was required.).

Expert Opinion

In re H.D., 184 N.C. App. 188, 645 S.E.2d 901 (2007) (unpublished) (Trial court erred by allowing the State's expert to testify as to the legal conclusion that the juvenile was "capable of proceeding to trial." Under Evidence Rule 704, expert opinion as to a legal conclusion or standard is inadmissible when the standard is a legal term of art which carries a specific legal meaning not readily apparent to the expert witness. Although the admission of the expert's opinion was erroneous, the error was harmless because the only competent evidence in the record demonstrated that the juvenile was capable of proceeding.).

State v. Smith, 310 N.C. 108 (1984) (Trial court did not err by refusing to admit testimony from defendant's wife as to whether he was "competent to stand trial." "Witnesses, both lay and expert, must testify in terms of the factual descriptions set out in the statute. They may, if a proper foundation is laid, give opinions as to whether a defendant, for example, is able to understand the nature and object of the proceedings against him, or to comprehend his own situation in reference to the proceedings, or to assist in his defense in a rational way. They may not give an opinion on the legal question of whether defendant lacks or possesses the capacity to proceed.").