

A low-angle, upward-looking photograph of several tall, fluted classical columns. The columns are made of light-colored stone and feature ornate capitals. They are arranged in a row, receding into the distance. The sky is a clear, pale blue. The overall image has a slightly desaturated, muted color palette.

Juvenile Capacity to Proceed



Where We Are Today

- Parts of the criminal law are incorporated into the Juvenile Code (G.S. 15A 1001 – 1003)
- Must have capacity to proceed to be prosecuted (including for a probation violation)

The “Dusky” Standard

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)



Where We Are Today

Unable to:	Understand nature and object of proceedings
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	Comprehend own situation in reference to proceedings, or
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	Assist in defense in rational or reasonable manner
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Where We Are Today

Lack of capacity must be caused by “mental illness or defect”



Part V. of Session Law 2023-114

Beginning with offenses committed on January 1, 2025

**Skills/Abilities
needed remain
the same**

Unable
to:

Understand nature and
object of proceedings

Comprehend own
situation in reference to
proceedings, or

Assist in defense in
rational or reasonable
manner



BECAUSE OF:

mental disorder,

intellectual disability,

neurological disorder,

traumatic or acquired brain injury, or

developmental immaturity.

Developmental immaturity = “[i]ncomplete development or delay associated with chronological age, which manifests as a functional limitation in one or more domains, including cognitive, emotional, and social development.”

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 Can be Raised Any Time

(in any case that is not subject to mandatory transfer)



Capacity cannot be raised in
mandatory transfer cases until
AFTER transfer



Forensic Evaluations

- Court can appoint one or more forensic evaluators
- Defense can still ask for funds for their own expert

G.S. 7B-2401.2(b)



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)



Expert evaluations – Court ordered

Misdemeanor case = local forensic examiner only

Felony case = local evaluation or State psychiatric facility; can bypass local with finding state facility is more appropriate

G.S. 7B-2401.2(c)

Forensic evaluation must
be done in the least
restrictive environment
considering the juvenile's
best interests and public
safety

Out-of-state residential
facilities may be used

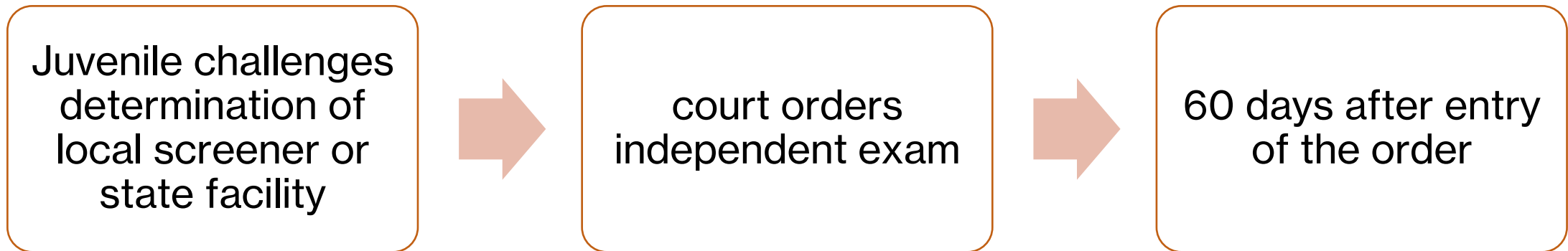
Timing of report completion

Misdemeanor
= 10 days
after exam

Felony = 30
days after
exam

G.S. 7B-2401.2(d)

Timing of report completion



G.S.7B-2401.2(d)(3)

extensions



FOR GOOD CAUSE
SHOWN



30 DAYS + 30 DAYS + 30
DAYS...UP TO 120 DAYS

G.S. 7B-2401.2(d)

Juvenile Forensic Evaluators

DHHS charged with setting new standards

Current evaluators grandfathered in; will have 12 months to satisfy new standards



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

Forensic Evaluation Must Consider

Whether capable,
incapable, or incapable
with ability to attain
capacity in foreseeable
future with remediation

Basis of incapacity



Any recommended treatment or education needed to attain capacity



Likelihood that juvenile will attain capacity in the foreseeable future due to recommended treatment or education



Assessment of probable duration of treatment or education to attain capacity



If treatment is recommended, a recommendation as to the least restrictive environment for services

If Evaluator Concludes No Capacity, Report Must Include

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 substantially likely to attain capacity in the foreseeable future

- May order remediation

Capacity Hearing Outcomes

If No Capacity to Proceed, NO

discretionary
transfer

adjudication

disposition
(including a violation
of probation and
modifications of
disposition)

G.S. 7B-2401(a), -2401.2(i)



REMEDIATION

Remediation

“[s]ervices directed only at facilitating the attainment of capacity to proceed for a juvenile who the court finds is incapable to proceed. Such term may include mental health treatment to reduce interfering symptoms, specialized psychoeducational programming, or a combination of these interventions.”

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.

Court Order Requiring Remediation Services

G.S. 7B-2401.4(b), (c), (e)



MUST be based on
recommendations from
the forensic evaluation



Services MUST be in least
restrictive environment;
order MUST contain written
findings of fact re: least
restrictive environment

DJJDP Responsibility (G.S. 7B-2401.4(g))

Provision of
psychoeducational
programming

Work with community
partners to secure
additional services
recommended in
forensic evaluation

Psychoeducational Goals

Improve Factual understanding

Rational understanding

Ability to work
effectively with attorney



Remediation Reports to the Court

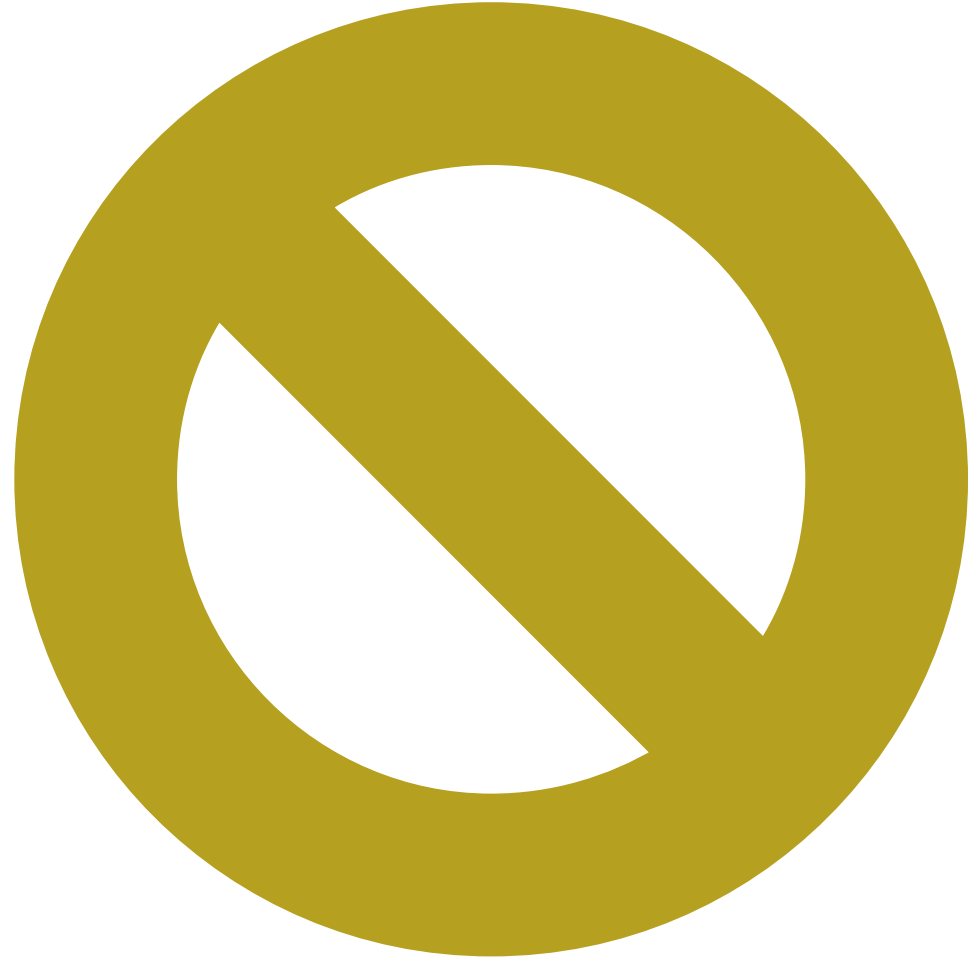
From remediation service provider

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

**No
incriminating
information
allowed in
remediation
notes or
reports**



Remediation Review Hearings



Within 30 days of receiving remediation report



To review remediation services



Informal

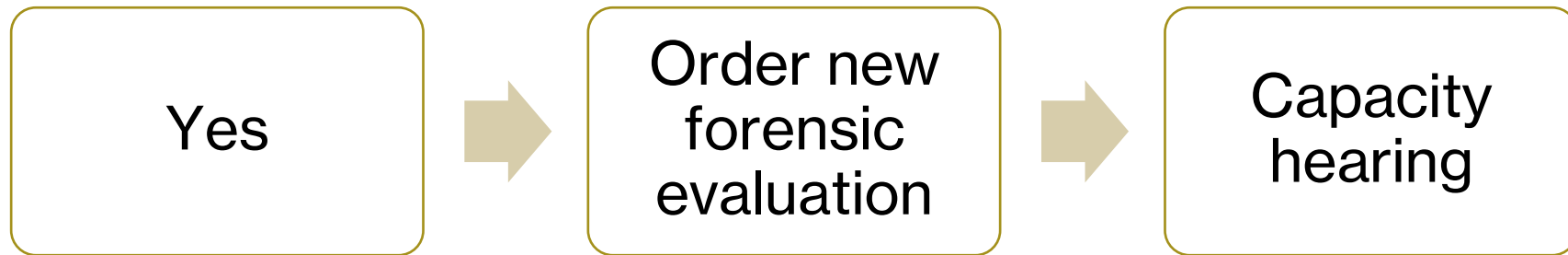


Any evidence that is relevant, reliable, and necessary



Should remediation continue or is reassessment of capacity warranted?

Is reassessment of capacity warranted?



G.S. 7B-2401.4(h)

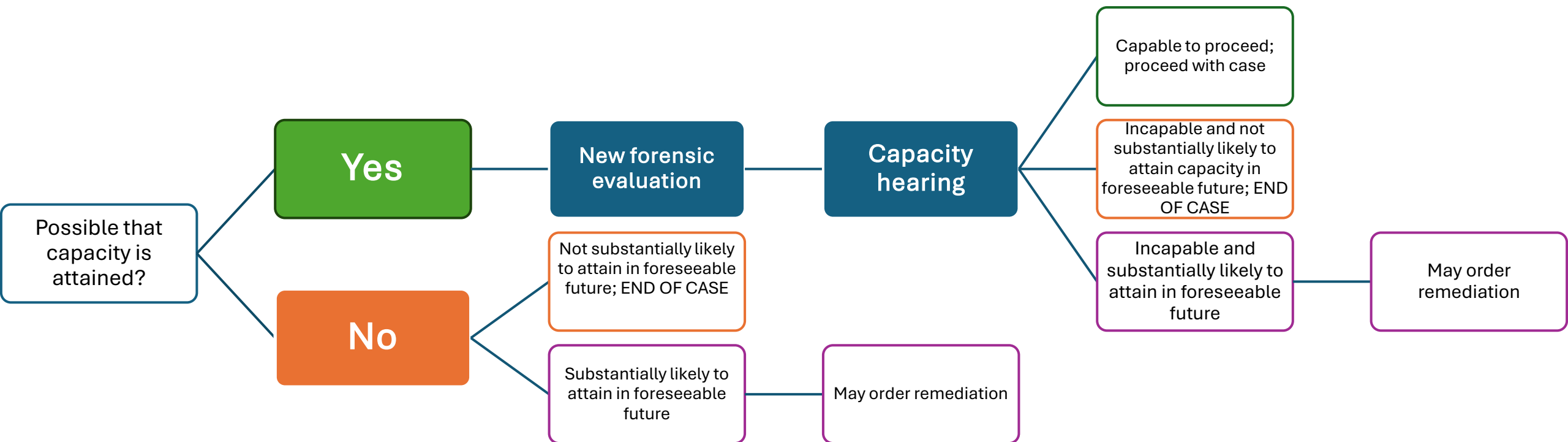
Notice that Juvenile Likely Completed Requirements of Remediation

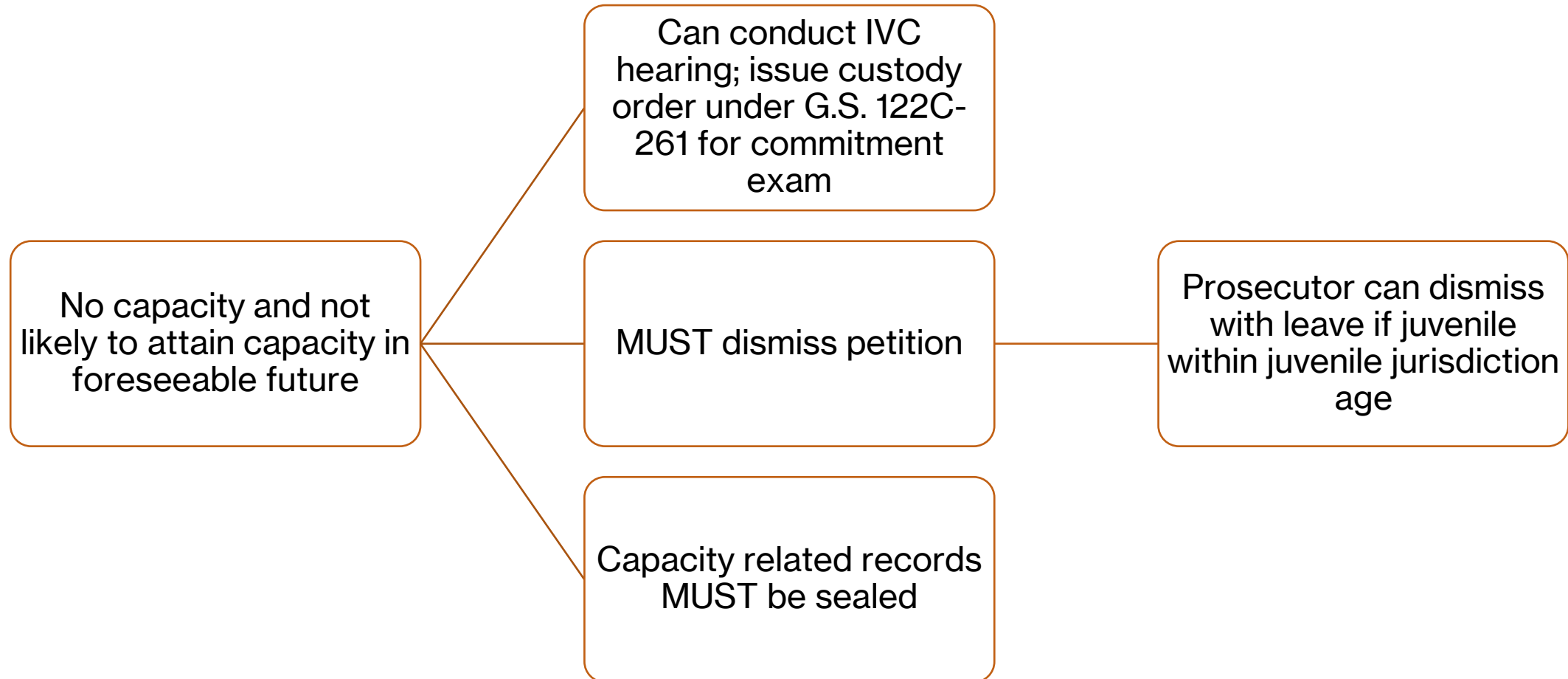
From provider within 2 business days of making determination

To court, prosecutor, and juvenile's attorney

Must also send remediation reports to court and juvenile's attorney; court can release to prosecutor after making certain findings

Must return to court within 30 days of completion for review or further proceedings





G.S. 7B-2401.5

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