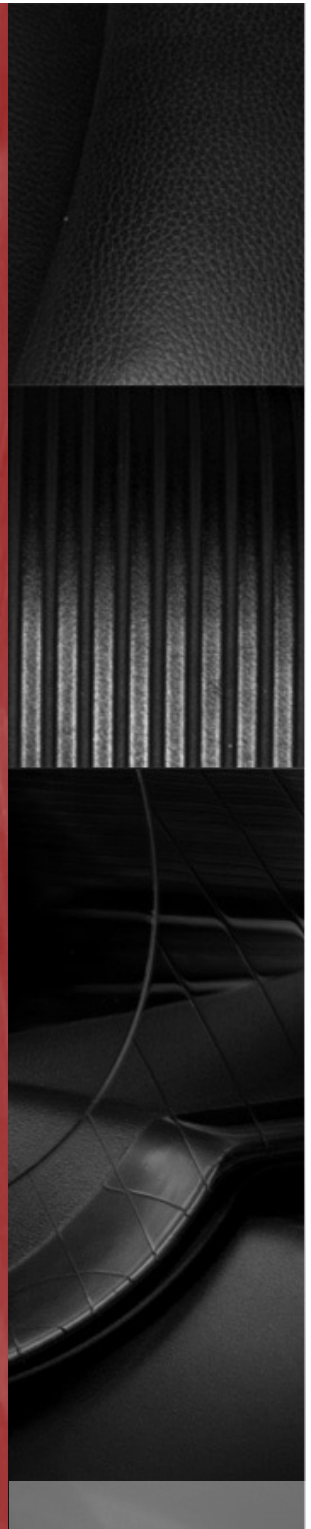


Capacity and Commitment

2026 Spring Public Defender Conference

John Rubin
UNC School of Government
May 2026



AOJB 2025/06 Capacity to Proceed

www.sog.unc.edu/sites/default/files/reports/2025-10-27_2025135_AOJB_Rubin.pdf

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1 of 56 | Automatic Zoom

I. Topics Covered in this Bulletin

- A. Capacity and Commitment
- B. Capacity Restoration
- C. Delays
- D. Juvenile Capacity
- E. Other Resources

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- A. Requirement of Capacity
- B. Test of Capacity
- C. Medication
- D. Relevant Time
- E. Comparison to Other Standards
- F. Capacity to Waive Presence during Trial
- G. Waiver of Right to Capacity Determination
- H. Burden of Proof
- I. Retrospective Capacity Determination

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- A. Duty to Investigate
- B. Ethical Considerations

IV. Options for Expert

 **SCHOOL OF GOVERNMENT**

ADMINISTRATION OF JUSTICE BULLETIN

NO. 2025/06 | OCTOBER 2025

Capacity to Proceed in Criminal Cases in North Carolina

John Rubin

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Rainy days ahead
59°F

Search

1:22 PM
11/17/2025

CHARGES

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graph TD; CHARGES --> CCmotion[Criminal court motion]; CHARGES --> CDCth[Civil district court hearing]; CCmotion --> LCE[Local capacity exam]; CCmotion --> CRHE[CRH capacity exam]; LCE --> CCH[Criminal court hearing]; CRHE --> CCH; CCH --> LCEx[Local commitment exam]; CCH --> SE[State commitment exam]; LCEx --> T[Treatment]; SE --> T; T --> CDCth
```

The diagram is a flowchart illustrating legal processes, divided by a vertical dashed line. At the top center is the word "CHARGES". Two red arrows point from "CHARGES" to "Criminal court motion" on the left and "Civil district court hearing" on the right. From "Criminal court motion", two red arrows point down to "Local capacity exam" and "CRH capacity exam". From both of these, a red arrow points down to "Criminal court hearing". From "Criminal court hearing", two red arrows point to "Local commitment exam" and "State commitment exam" across the dashed line. From both of these, a red arrow points up to "Treatment". Finally, a red arrow points up from "Treatment" to "Civil district court hearing".

Criminal court
motion

Civil district
court hearing

Local
capacity
exam

CRH
capacity
exam

Treatment

Criminal court
hearing

Local
commitment
exam

State
commitment
exam



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.”



Commentary to 15A-1001 to 15A-1009

- “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.”



Ethical Obligations

- 3rd edition of ABA Mental Health Standards
 - Defense counsel should raise capacity with court if they have a good faith doubt about client's capacity
- 4th edition (2016) of ABA Mental Health Standards (in your e-materials)
 - Defense counsel may seek an ex parte evaluation of capacity or raise capacity with court if they have a good faith doubt
- Utah State Bar opinion, 2017 (in your e-materials)
 - Under revised ABA standards and other provisions, defense counsel should consider other steps before raising capacity with court
- State v. Epps (Minn. App. 2023) (in your e-materials)
 - Defense counsel was not ineffective in failing to raise capacity with court

CHARGES

Criminal court
motion

Civil district
court hearing

Local
capacity
exam

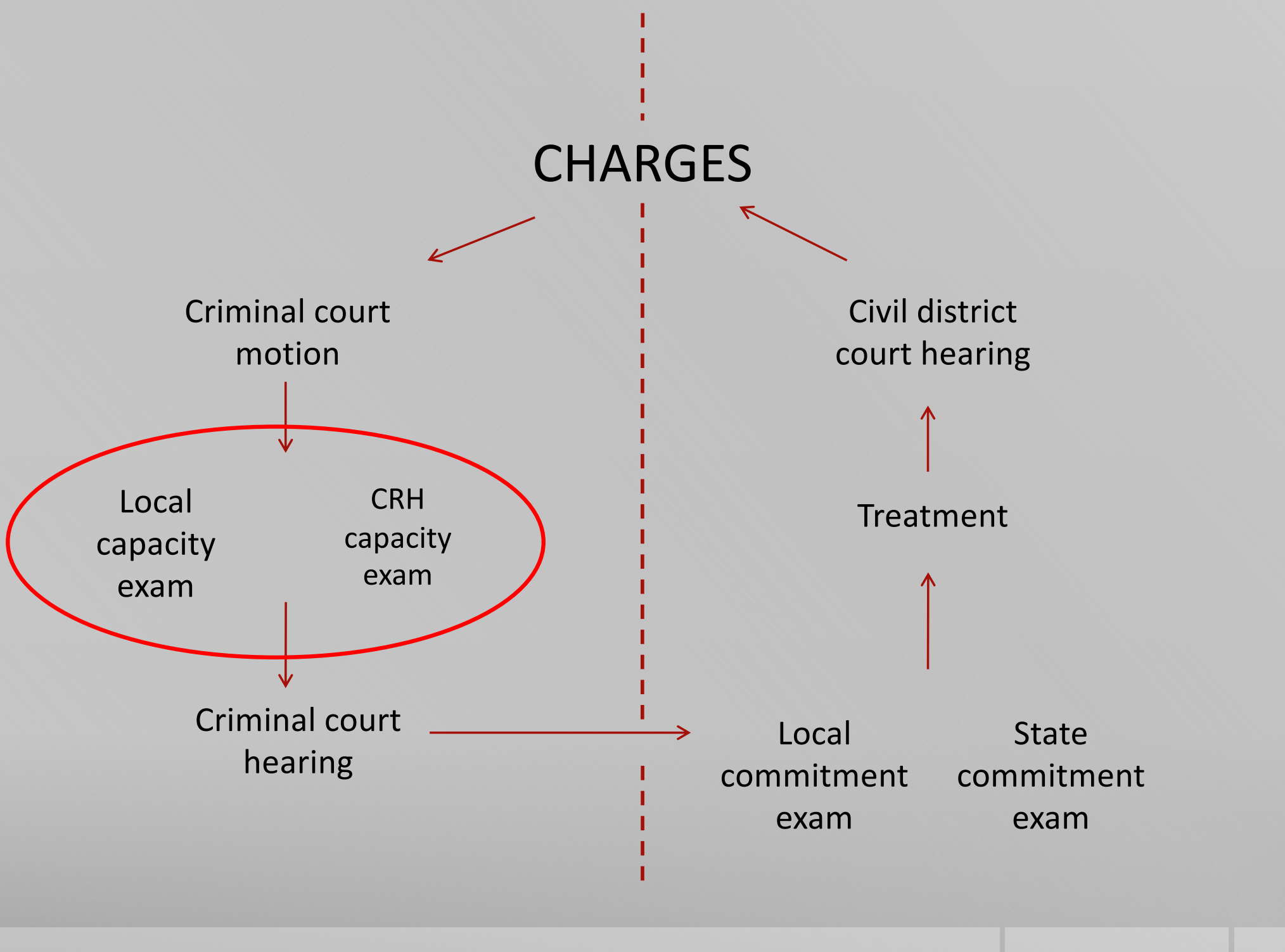
CRH
capacity
exam

Treatment

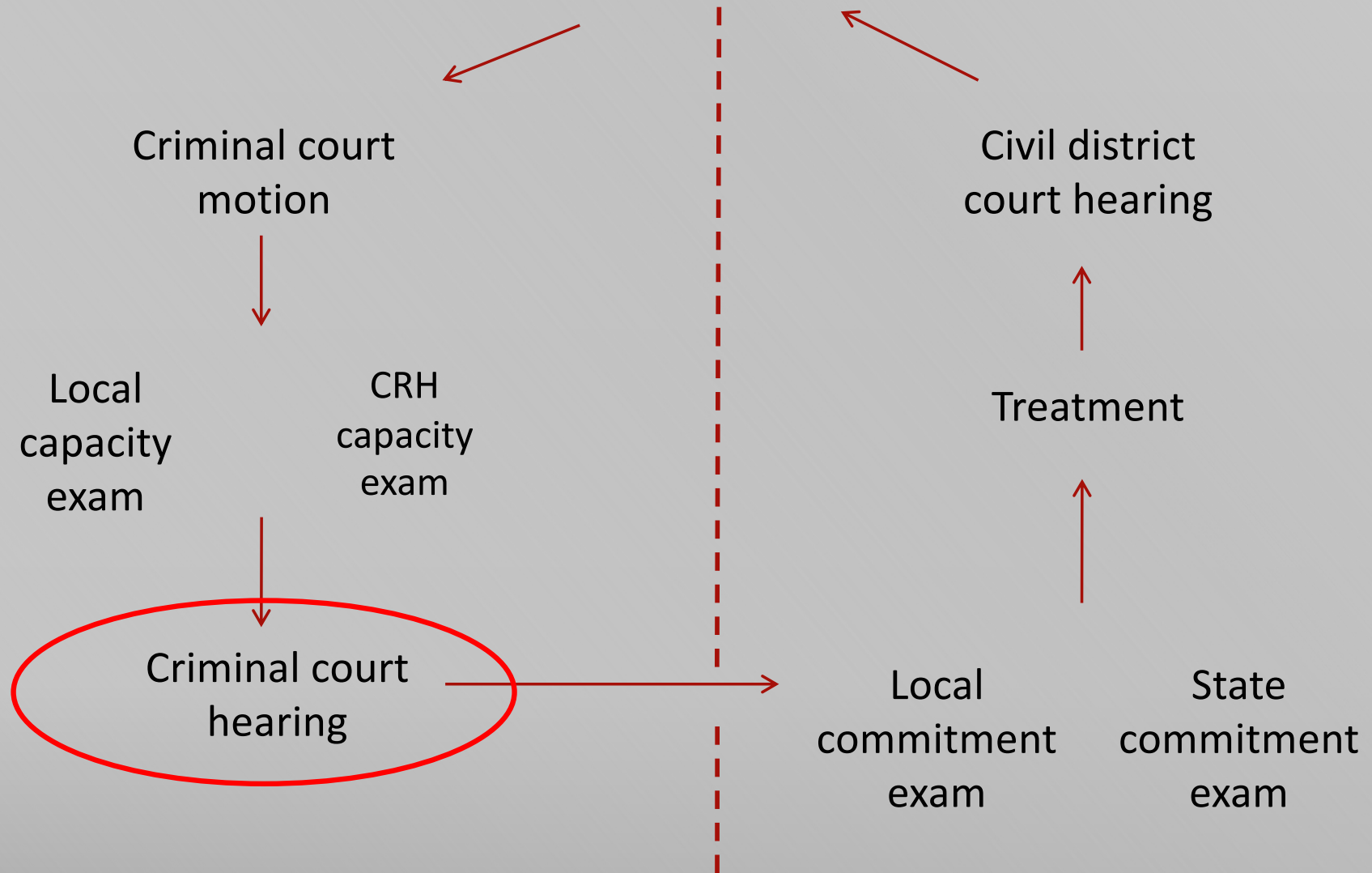
Criminal court
hearing

Local
commitment
exam

State
commitment
exam



CHARGES





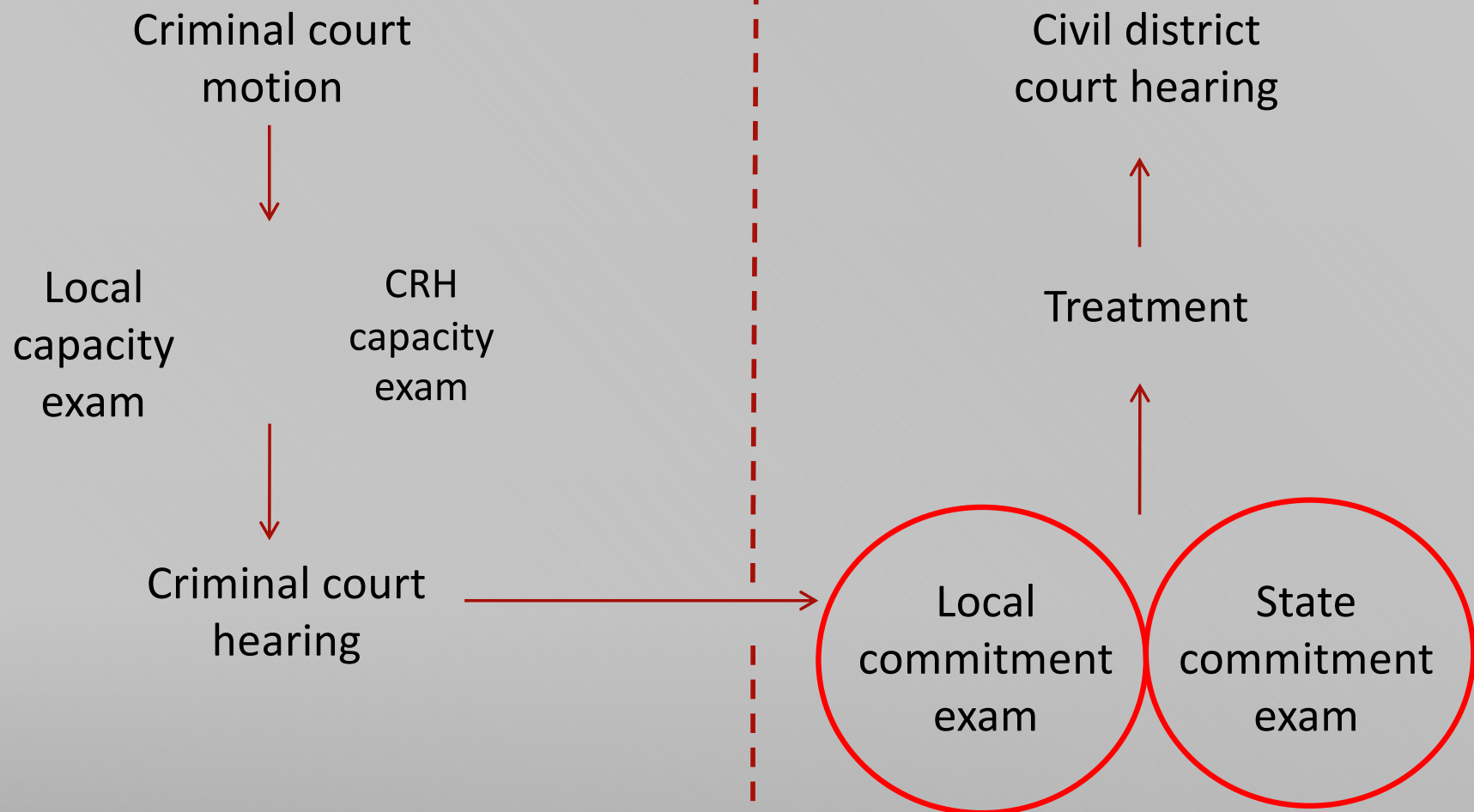
Three Determinations under 15A-1003

1. Determine whether the defendant is capable to proceed
2. If the defendant is incapable, determine whether the defendant meets the criteria for commitment
3. If the defendant meets the criteria for commitment, determine whether the defendant was charged with a violent or nonviolent offense



Definition of Violent Offense

- “[A] violent crime, including a crime involving assault with a deadly weapon.” G.S. 15A-1003(a)
 - Whether a crime is “violent” depends on elements. *In re Murdock*, 222 N.C. App. 45 (2012)
 - Whether a crime “involves” assault with a deadly weapon depends on facts. *Id.*





Mandatory Dismissal per 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

Effective Dec. 1, 2025, on motion of district attorney, court must consider commitment before dismissing case under 15A-1008 (S.L. 2025-93, H. 307)

AOC-SP-312 (Dec. 2025)

STATE OF NORTH CAROLINA			File No. []
[] County			In The General Court Of Justice ☐ District ☐ Superior Court Division
IN THE MATTER OF			INVOLUNTARY COMMITMENT CUSTODY ORDER DEFENDANT FOUND INCAPABLE TO PROCEED AND CHARGES DISMISSED
Name And Address Of Respondent [] [] []			
[]			
Date Of Birth*	Race*	Sex*	
[]	[]	[]	
*Date of birth, race, and sex are collected so that this information may be transmitted to NICS in the event of a qualifying finding under G.S. 14-409.43(a)(5).			G.S. 15A-1003, -1004; 122C-261, -262, -263
Spoken Language Court Interpreter Needed For Any Party, Victim, Or Witness? (If Yes, identify person(s) and language(s). Interpreters provided for all court proceedings at no cost.) ☐ No ☐ Yes: (explain)			
		FINDINGS	
The respondent has been charged in File No. [] with a criminal offense in the above named county and has been found incapable of proceeding to trial under G.S. 15A-1002. The Court considered the opinion of [] (name of forensic evaluator) in the report dated [] (list date of report) as evidence of incapacity to proceed. A copy of the evaluator's report is attached. Upon motion of the district attorney, and based on the evidence presented, the Court finds that there are reasonable grounds to believe that the respondent probably has a mental illness and is either dangerous to self or others or in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness in that (insert appropriate findings)			



Pretrial Release

- Pending capacity determination. *See* 15A-1002(c)
- Pending commitment proceedings. *See* 15A-1003(b)
- If not placed in custody of hospital. *See* 15A-1004(b)



Legislation

- S.L. 2025-93 (H. 307)
 - Requires study by April 1, 2026, from NC Collaboratory on intersection of mental health and the justice system
- S.L. 2025-27, Section 7 (H. 576)
 - Adopts new G.S. 122C-256 approving jail- based and community-based pilot programs for capacity restoration
 - Requires DHHS and AOC, in collaboration with other stakeholders, to report by Jan. 1, 2026, regarding permanent process for capacity restoration separate from commitment