

Capacity (& Commitment) Hearings

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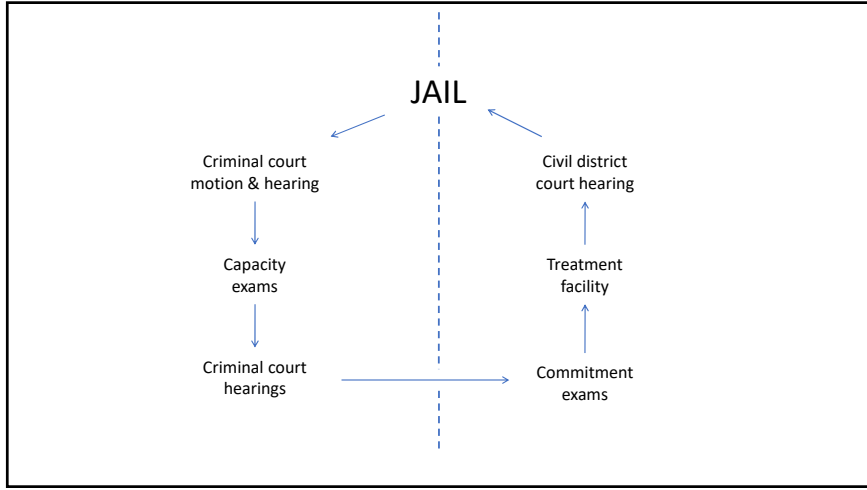
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The screenshot shows the UNC School of Government website. The main content area displays 'Chapter 2 Capacity to Proceed' from the 'NC Superior Court Judges' Benchbook. The table of contents for this chapter is as follows:

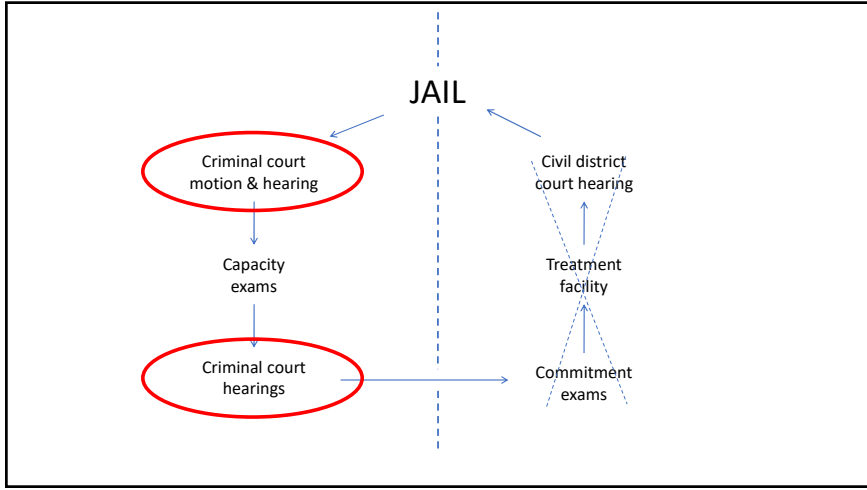
2.1 Standard for Capacity to Proceed to Trial	2-3
A. Requirement of Capacity	
B. Test of Capacity	
C. Medication	
D. Time of Determination	
E. Compared to Other Standards	
F. Burden of Proof	
G. Retrospective Capacity Determination	

Below the table of contents, there is a 'Download PDF' button and a 'Synopsis' section. The synopsis states: 'This section discusses the standards and procedures related to challenging a defendant's capacity to proceed to trial. It covers, among other things, standards for assessing capacity, expert capacity examinations, hearings on capacity, and involuntary commitment procedures after...'.

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Hearing # 1: Motion for Capacity Evaluation

1. Who can request an evaluation?
 - Defense, State, or Judge
2. When can an evaluation be requested?
 - Any time
3. Does the defendant need to be taken into custody for the evaluation?
 - No, although GS 15A-1002(c) allows court to make temporary orders for confinement or security pending hearing or ruling on capacity
4. In misdemeanor cases, who does the eval?
 - A local evaluator only

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Who does the evaluation for misdemeanors?

G.S. 15A-1002(b)

....

(1a) In the case of a defendant charged with a misdemeanor or felony, the court may appoint one or more impartial medical experts

(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

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Hearing # 2: Capacity Determination

1. Is a capacity evaluation confidential?
 - Yes, when submitted; no, when offered at hearing unless you rule otherwise
2. If the evaluator finds the defendant capable, do you hold a hearing?
 - It's a good idea to have a hearing of some sort
3. Do the Rules of Evidence apply at the hearing?
 - Yes, based on Rule of Evidence 1101, but hearing may be informal
4. What happens if the defendant fails to cooperate with the evaluator?
 - The burden is on the defendant to show incapacity

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Hearing # 2: Capacity Determination (cont'd)

5. Can a party call the evaluator as a witness?
 - Yes
6. Can defendant's attorney present their own observations?
 - Tricky, but permissible
7. Are findings of fact required?
 - Cases say it's the better practice, but the AOC form does not include space
8. What are the judge's options in the criminal case if the defendant is found incapable?
 - Put criminal case on hold until defendant is capable OR dismiss

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When Should You Dismiss?

15A-1008(a)

(1) When it appears to the satisfaction of the court that the defendant will not gain capacity to proceed.

(2) When as a result of incarceration, involuntary commitment to an inpatient facility, or other court-ordered confinement, the defendant has been substantially deprived of his liberty for a period of time equal to or in excess of the maximum term of imprisonment permissible for . . . prior conviction Level III for misdemeanors for the most serious offense charged.

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Applying 1008(a)(2)

- D is charged with a Class 2 misdemeanor, with a Level III maximum of 60 days. He was found incapable to stand trial and has been in custody 60 days. How many days count . . .
 - if he spent 30 days in jail and 30 days in a hospital as a result of involuntary commitment
 - If he spent 30 days in jail, was released until a hospital bed was available, then spent 30 days in a hospital as a result of involuntary commitment
- All days count for dismissal in both instances



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Applying 1008(a)(2), cont'd

- D is charged with two misdemeanors. He has been in custody 60 days. Are you required to dismiss when
 - One misdemeanor is a Class 2, with a Level III maximum of 60 days, and one misdemeanor is a Class 3, with a Level III maximum of 20 days
 - Both misdemeanors are Class 2
- Dismissal is required in both instances



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Hearing # 3: Involuntary Commitment

1. What commitment procedures apply to a defendant who has been found incapable to proceed?
 - 15A-1003 states that the court must determine whether the defendant meets the grounds for involuntary commitment
2. When does a judge make this determination?
 - "Upon such additional hearing, if any, as he determines to be necessary . . ."
3. What does the judge decide?
 - Whether there are reasonable grounds that the defendant meets commitment criteria
 - Whether the defendant was charged with a violent crime

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What's a "Violent" Crime

- A crime is violent under 15A-1003(a):
 - The defendant was "charged with a violent crime, including a crime involving assault with a deadly weapon"
- In re Murdock, 222 N.C. App. 45 (2012):
 - To be a "violent crime," an element of the offense includes "the use, attempted use, threatened use, or substantial risk of use of physical force against the person or property of another"
 - To be a crime "involving" assault with a deadly weapon, the facts involve assault with a deadly weapon in commission of the offense

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What's a "Violent Crime" (cont'd)

- In Murdock, D was charged with possession of a firearm by a person previously convicted of a felony and RDO
 - Not violent based on elements of offenses
 - But facts involved assault with a deadly weapon based on D's actions of "stating that he wasn't going with the officers, running into the bedroom where he stood within arm's reach of a loaded revolver, and resisting while being handcuffed and removed from the bedroom"

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