

Article 56. Incapacity to Proceed

CRIMINAL CODE COMMISSION COMMENTARY

This Article has two major objectives. The first is to codify the rule of law which provides that a defendant may not be tried (or punished) when he lacks mental capacity to proceed, and to provide adequate procedures for determining when that situation exists. See [State v. Propst, 274 N.C. 62 \(1968\)](#). The second is to provide appropriate procedures for the commitment and care of a defendant who is not capable of being tried, and to provide for his return for trial in the event that he does gain capacity. A number of sources were consulted for ideas for this draft, including our own case and statutory law, the New York Law, the Model Penal Code, and proposed rules for the State of Arizona, but the result is not a wholesale copy of any of these. The definition of incapacity is intended to be inclusive, and would appear to be both self-explanatory and flexible enough to cover appropriate situations. The proceeding prior to trial required by the *Propst* case is provided. In addition to the present provisions for temporary commitment to a State hospital, the court is given additional sources of information by the provisions permitting the appointment of medical experts.

A provision not found in the present law is that in § 15A-1501(b) which permits the court to go forward in matters which may be handled by counsel without the assistance of the defendant. If, for example, the pleadings charge facts which do not amount to a crime, there is no reason to delay that determination.

The second major objective requires consideration of the case of [Jackson v. Indiana, 92 S.Ct. 1845 \(1972\)](#). In that case the Supreme Court of the United States said,

"We hold, consequently, that a person charged by a State 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. Furthermore, even if it is determined that the defendant probably soon will be able to stand trial, his continued commitment must be justified by progress toward that goal."

In order to accomplish these requirements, this draft provides that when the trial court determines that the defendant does not have capacity to proceed, it will turn him over to the clerk for civil commitment proceedings. This will eliminate the possibility that a defendant suffers extended commitment simply because he has been accused of a crime. Thus the defendant who is not dangerous, but who lacks capacity for trial, can be released. That result is required by the *Jackson* case. What the criminal court *can* do, is to enter appropriate orders to provide for the return of the defendant for trial, as it can do for any other defendant. Ample authority for such orders is provided here.

In recent years there have been reported some rather striking instances when defendants were committed to a state institution and apparently forgotten. After many years they were "discovered" and a question arose as to how to dispose of the pending case. The Commission proposes a requirement for periodic reporting to the clerk (§ 15A-1004(d)) to prevent this from happening. In addition, authority for dismissal of the pending case is provided in three appropriate instances, as set out in § 15A-1008.

The question of the determination of mental capacity is a much broader question than the provisions proposed here. Revision of the civil commitment provisions is beyond the assignment of the Criminal Code Commission, and there are problems here. The case of [In re Tew, 280 N.C. 612 \(1972\)](#), held unconstitutional certain portions of G.S. 122-86, dealing with the disposition of persons acquitted by reason of insanity. If the Commission is to work with that section, it necessarily must be done in connection with drafting for the trial stages of criminal procedure, a task remaining to be done at this point. Codification or modification of the rules with regard to the capacity to commit crime is another area which is outside the scope of the present draft.

§ 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.

§ 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) 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 (1) 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. The court:

(1) 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 and the court may call any expert so appointed to testify at the hearing; any expert so appointed may be called to testify at the hearing by the court at the request of either party; or

(2) In the case of a defendant charged with a misdemeanor only after the examination pursuant to subsection (b)(1) of this section or at any time in the case of a defendant charged with a felony, 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; in the case of a defendant charged with a felony, if a defendant is ordered to a State facility without first having an examination pursuant to subsection (b)(1) 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 Laws 1989, c. 486, § 1.

(b1) If the report pursuant to subdivision (1) or (2) of subsection (b) of this section indicates 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.

(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. A copy of the full report shall be forwarded to defense counsel, or to the defendant if he is not represented by counsel provided, 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. 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.

§ 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.

§ 15A-1004. Orders for safeguarding of defendant and return for trial

(a) When a defendant is found to be incapable of proceeding, the trial court must make appropriate orders to safeguard the defendant and to ensure his return for trial in the event that he subsequently becomes capable of proceeding.

(b) If the defendant is not placed in the custody of a hospital or other institution in a proceeding for involuntary civil commitment, appropriate orders may include any of the procedures, orders, and conditions provided in Article 26 of this Chapter, Bail, specifically including the power to place the defendant in the custody of a designated person or organization agreeing to supervise him.

(c) If the defendant is placed in the custody of a hospital or other institution in a proceeding for involuntary civil commitment, the orders must provide for reporting to the clerk if the defendant is to be released from the custody of the hospital or institution. The original or supplemental orders may make provisions as in subsection (b) in the event that the defendant is released. If the defendant was charged with a violent crime, including a crime involving assault with a deadly weapon, and that charge has not been dismissed, the order must require that if the defendant is to be released from the custody of the hospital or other institution, he is to be released only to the custody of a specified law enforcement agency. If the original or supplemental orders do not specify to whom the respondent shall be released, the hospital or other institution may release the defendant to whomever it thinks appropriate.

(d) If the defendant is placed in the custody of a hospital or institution pursuant to proceedings for involuntary civil commitment, or if the defendant is placed in the custody of another person pursuant to subsection (b), the orders of the trial court must require that the hospital, institution, or individual report the condition of the defendant to the clerk at the same times that reports on the condition of the defendant-respondent are required under Part 7 of Article 5 of Chapter 122C of the General Statutes, or more frequently if the court requires, and immediately if the defendant gains capacity to proceed. The order must also require the report to state the likelihood of the defendant's gaining capacity to proceed, to the extent that the hospital, institution, or individual is capable of making such a judgment.

(e) The orders must require and provide for the return of the defendant to stand trial in the event that he gains capacity to proceed, unless the charges have been dismissed pursuant to [G.S. 15A-1008](#), and may also provide for the confinement or pretrial release of the defendant in that event.

(f) The orders of the court may be amended or supplemented from time to time as changed conditions require.

[§ 15A-1005. Reporting to court with regard to defendants incapable of proceeding](#)

The clerk of the court in which the criminal proceeding is pending must keep a docket of defendants who have been determined to be incapable of proceeding. The clerk must submit the docket to the senior resident superior court judge in his district at least semiannually.

[§ 15A-1006. Return of defendant for trial upon gaining capacity](#)

If a defendant who has been determined to be incapable of proceeding, and who is in the custody of an institution or an individual, gains capacity to proceed, the individual or institution must notify the clerk in the county in which the criminal proceeding is pending. The clerk must notify the sheriff to return the defendant to the county for trial, and to hold him for trial, subject to the orders of the court entered pursuant to [G.S. 15A-1004](#).

[§ 15A-1007. Supplemental hearings](#)

(a) When it has been reported to the court that a defendant has gained capacity to proceed, or when the defendant has been determined by the individual or institution having custody of him to have gained capacity and has been returned for trial, the court may hold a supplemental hearing to determine whether the defendant has capacity to proceed. The court may take any action at the supplemental hearing that it could have taken at an original hearing to determine the capacity of the defendant to proceed.

(b) The court may hold a supplemental hearing any time upon its own determination that a hearing is appropriate or necessary to inquire into the condition of the defendant.

(c) The court must hold a supplemental hearing if it appears that any of the conditions for dismissal of the charges have been met.

§ 15A-1008. Dismissal of charges

When a defendant lacks capacity to proceed, the court may dismiss the charges:

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

(2) When the defendant has been substantially deprived of his liberty for a period of time equal to or in excess of the maximum permissible period of confinement for the crime or crimes charged; or

(3) Upon the expiration of a period of five years from the date of determination of incapacity to proceed in the case of misdemeanor charges and a period of 10 years in the case of felony charges.

§ 15A-1009. Dismissal with leave when defendant is found incapable of proceeding

(a) If a defendant is found by the court to be incapable of proceeding and the charges have not been dismissed pursuant to [G.S. 15A-1008](#), a prosecutor may enter a dismissal with leave under this section.

(b) Dismissal with leave results in removal of the case from the docket of the court, but all process outstanding, with the exception of any appearance bond, retains its validity, and all necessary actions in the case may be taken.

(c) The prosecutor may enter the dismissal with leave orally in open court or by filing the dismissal in writing with the clerk. If the dismissal is entered orally, the clerk must note the nature of the dismissal in the case records.

(d) Upon the defendant becoming capable of proceeding, or in the discretion of the prosecutor when he believes the defendant may soon become capable of proceeding, the prosecutor may reinstitute the proceedings by filing written notice with the clerk, with the defendant and with the defendant's attorney of record.

(e) A dismissal with leave entered under this section is no longer in effect if the court later dismisses the charges pursuant to [G.S. 15A-1008](#).

(f) Nothing in this section shall limit or prohibit the court from dismissing criminal charges pursuant to [G.S. 15A-1008](#) upon motion by the defendant or upon the court's own motion.

§ 15A-1010. Reserved

STATE OF NORTH CAROLINA

File No.

_____ County

In The General Court Of Justice
 District Superior Court Division

STATE VERSUS

Name Of Defendant

**MOTION AND ORDER
APPOINTING LOCAL CERTIFIED
FORENSIC EXAMINER**

G.S. 15A-1002

Offense

MOTION QUESTIONING DEFENDANT'S CAPACITY TO PROCEED

The undersigned moves that the above named defendant be examined to determine whether by reason of mental illness or defect the defendant is unable to understand the nature and object of the proceedings against the defendant, to comprehend his/her own situation in reference to the proceedings, and to assist in his/her defense in a rational or reasonable manner. The specific conduct that leads the moving party to question the defendant's capacity to proceed is as follows:

Date

Signature

Prosecutor Defendant's Attorney
 Defendant Judge

Name And Address Of Defendant's Attorney

District Attorney's Office Address

Telephone No.

Telephone No.

CERTIFICATE OF SERVICE BY MOVING PARTY

I certify that a copy of this Motion was served by:

- delivering a copy personally to the
 - defendant's attorney. prosecutor. defendant.
- depositing a copy, enclosed in a postpaid properly addressed envelope, in a post office or official depository under the exclusive care and custody of the U. S. Postal Service directed to the
 - defendant's attorney. prosecutor. defendant.
- leaving a copy at the office of the
 - defendant's attorney with an associate or employee. prosecutor with an associate or employee.

Name And Title Of Person With Whom Copy Left

- Service accepted by:
 - defendant's attorney. prosecutor. defendant.

Signature Of Person Accepting Service

Date Served

Signature Of Person Serving

Title

ORDER APPOINTING LOCAL CERTIFIED FORENSIC EXAMINER

A motion questioning the defendant's capacity to proceed having been made and considered, the Court finds that the defendant's capacity to proceed is in question. The Court Orders that:

1. One or more Forensic Screening Examiners of the Mental Health Center named below, certified by the North Carolina Forensic Services, shall screen the defendant within seven (7) days after receiving this Order and determine the questions set forth in the motion.
2. The Area Director of the Mental Health Center shall cause a written report of findings and recommendations to be submitted to the Court.
3. If the screening examination reveals a need for evaluation by a medical expert which can be done at the local mental health center, the examiner shall arrange for this evaluation and notify the Clerk of Superior Court in writing. The medical expert's evaluation summary shall be transmitted to the Court in the manner described later in this Order. If the screening examination reveals that the evaluation by medical experts at Dorothea Dix Hospital Forensic Unit is needed, the examiner shall notify the Court immediately.
4. The Report required by items 2 and 3 of this report shall be transmitted to the Court in the following manner:
 - (a) A brief covering statement (containing only the facts of the examination and any conclusions) shall be prepared in duplicate and enclosed in an envelope addressed to the Clerk of Superior Court in this county.
 - (b) Three copies of the complete report shall be prepared. Two copies are to be enclosed in a separate sealed envelope addressed to the attention of the undersigned judge and marked "confidential," one copy is to be forwarded to defense counsel, or to the defendant, if the defendant is not represented by counsel.
 - (c) The envelope containing the covering statement and the sealed envelope addressed to the Judge shall be enclosed in a larger envelope which shall be addressed to the Clerk of Superior Court of this county. All envelopes shall show the file number of the case.
 - (d) The Clerk shall open and file the covering statement with the Court file. The complete report shall be retained unopened in the envelope addressed to the undersigned Judge until requested by the Court.
5. The Clerk of Superior Court shall immediately advise the Mental Health Center named below of the entry of this Order and shall provide them with a copy. The Clerk shall transmit an additional copy to the jailer of this county if the defendant is confined.
6. The Sheriff is Ordered to transport the defendant to the Mental Health Center named below and return the defendant afterwards.

<i>Name Of Mental Health Center</i>	<i>Date</i>
	<i>Signature Of Judge</i>
	<i>Name Of Judge (Type Or Print)</i>

RETURN OF SERVICE

I certify that this Order was received and served as follows:

- By transporting the defendant to the Mental Health Center.
- Other: *(specify)*

<i>Date Received</i>	<i>Signature Of Deputy Sheriff Making Return</i>
<i>Date Served</i>	<i>Name Of Sheriff (Type Or Print)</i>
<i>Date Of Return</i>	<i>County Of Sheriff</i>

STATE OF NORTH CAROLINA

File No.

_____ County

In The General Court Of Justice
 District Superior Court Division

Name Of Defendant

**MOTION AND ORDER
COMMITTING DEFENDANT
TO DOROTHEA DIX
FOR EXAMINATION ON
CAPACITY TO PROCEED**

G.S. 15A-1002

Offense

NOTE: A person charged with a misdemeanor must have a local examination before an examination at Dorothea Dix Hospital may be ordered. In felony cases, a local examination must be ordered before an examination at Dorothea Dix Hospital if the court finds that a local impartial medical expert or forensic evaluator approved under the Rules of the Commission for Mental Health, Developmental Disabilities and Substance Abuse Services is available and appropriate. To order a local examination, use form AOC-CR-207.

MOTION QUESTIONING DEFENDANT'S CAPACITY TO PROCEED

The undersigned moves that the above named defendant be examined to determine whether by reason of mental illness or defect the defendant is unable to understand the nature and object of the proceedings against the defendant, to comprehend his/her own situation in reference to the proceedings, and to assist in his/her defense in a rational or reasonable manner. The specific conduct that leads the moving party to question the defendant's capacity to proceed is as follows:

Date

Signature

Prosecutor Defendant's Attorney
 Judge

CERTIFICATE OF SERVICE BY MOVING PARTY

I certify that a copy of this Motion was served by:

- delivering a copy personally to the
 - defendant's attorney. prosecutor. defendant.
- depositing a copy, enclosed in a postpaid properly addressed wrapper, in a post office or official depository under the exclusive care and custody of the U. S. Postal Service directed to the
 - defendant's attorney. prosecutor. defendant.
- leaving a copy at the office of the
 - defendant's attorney with an associate or employee. prosecutor with an associate or employee.

Name And Title Of Person With Whom Copy Left

- Service accepted by:
 - defendant's attorney. prosecutor. defendant.

Signature Of Person Accepting Service

Date Served

Signature Of Person Serving

Title

FINDINGS

This cause was heard before the undersigned judge upon the motion of the person named on the reverse questioning the defendant's capacity to proceed. Having considered the motion, and after hearing evidence, the Court finds that:

- 1. The defendant's capacity to proceed
 is in question. is not in question.
- 2. The defendant is charged with
 a. a misdemeanor. b. a felony.
- 3. The defendant has been examined in connection with the current charges by one or more local impartial medical experts or forensic evaluators approved under the rules of the Commission for Mental Health, Developmental Disabilities and Substance Abuse Services.
(NOTE: A person charged with a misdemeanor must have a local examination before an examination at a state facility may be ordered.)
- 4. An examination of the defendant at Dorothea Dix Hospital to determine the defendant's capacity would be more appropriate under the provisions of G.S. 15A-1002(b)(2) than a local evaluation.

ORDER

It is ORDERED that:

- 1. The defendant be committed to Dorothea Dix Hospital for a period not to exceed sixty (60) days for observation and treatment, pursuant to G.S. 15A-1002, to determine the defendant's capacity to proceed. The Director of Dorothea Dix Hospital must direct a written report describing the present state of the defendant's mental health to the defense attorney and to the Clerk of Superior Court for the above referenced county. The sheriff of this county shall transfer the defendant to Dorothea Dix Hospital and shall return the defendant to this county when notified that the evaluation has been completed.

Upon presentation of a copy of this Order by the forensic evaluator designated by Dorothea Dix Hospital, any physician or clinician, licensed health care facility, licensed health care provider, local management entity (LME), area mental health program, the North Carolina Department of Correction, the North Carolina Department of Juvenile Justice and Delinquency Prevention, any county detention facility, or any school district is hereby authorized and required to furnish copies of all records, including school records and records containing information relating to alcohol abuse, drug abuse and psychological or psychiatric conditions, concerning defendant to the forensic evaluator designated by Dorothea Dix Hospital.

Upon request of the forensic evaluator designated by Dorothea Dix Hospital, counsel for the State and defendant shall furnish to the forensic evaluator designated by Dorothea Dix Hospital such records and information in counsel's possession as the evaluator requests, including but not limited to copies of law enforcement reports, investigations, witness statements, statements by defendant, defendant's medical records, and prior psychiatric or psychological evaluations of defendant. Nothing herein shall be construed to require counsel to divulge any information, documents, notes, or memoranda that are protected by attorney-client privilege or work-product doctrine.

- 2. The motion is denied as the defendant's capacity to proceed is not in question.

<i>Name And Address Of Defendant's Attorney</i>	<i>Date</i>
	<i>Signature Of Presiding Judge</i>
<i>Telephone No.</i>	<i>Name Of Presiding Judge (Type Or Print)</i>

RETURN OF SERVICE

I certify that this Order was received and served as follows:

- By transporting the defendant to Dorothea Dix Hospital.
- Other: *(specify)*

<i>Date Served</i>	<i>Signature</i>	
<i>Date Received</i>	<i>Date Of Return</i>	<i>Name Of Sheriff</i>
<i>County Of Sheriff</i>		<i>Deputy Sheriff Making Return</i>

STATE OF NORTH CAROLINA

File No.

_____ County

In The General Court Of Justice
District Court Division

IN THE MATTER OF:

Name And Address Of Respondent

**INVOLUNTARY COMMITMENT
CUSTODY ORDER
DEFENDANT FOUND
INCAPABLE TO PROCEED**

G.S. 15A-1003, -1004; 122C-261, -262, -263

I. FINDINGS

The respondent has been charged in File No. _____ with a criminal offense in the above named county has been found incapable of proceeding to trial under G.S. 15A-1002.

Based on the evidence presented, the Court finds that there are reasonable grounds to believe that the respondent is probably mentally ill and 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)

In addition, the Court finds that the respondent

1. is probably mentally retarded, in that *(insert appropriate findings)*

2. is charged with a violent crime in violation of G.S. _____, in that *(insert appropriate findings)*

Notice To 24-hour Facility:

Criminal charges are still pending against the respondent. You must report to the Clerk in the above named county the condition of the defendant-respondent and the likelihood of the defendant's gaining capacity to proceed at the time of each commitment rehearing. You must also report if the defendant-respondent regains capacity to proceed or if the defendant-respondent is released. If the defendant-respondent is released, he/she must be released to the law enforcement agency named below.

Name Of Law Enforcement Agency

CUSTODY ORDER

To The Sheriff Of _____ County:

The Court ORDERS you to take the above named respondent into custody and transport the respondent:

- 1. to a local person authorized by law to conduct an examination, for examination. *(Use when not charged with a violent crime.)*
- 2. directly to the 24-hour facility named below for temporary custody, examination and treatment pending a district court hearing. *(Use when charged with a violent crime.)*

Name And Address Of 24-Hour Facility

Date

Signature Of Judge

Or following facility designated by area authority:

Name Of Judge (Type Or Print)

NOTE: Use AOC-SP-910M for involuntary commitment if defendant found not guilty by reason of insanity.

II. RETURN OF SERVICE I certify that this Order was received and served as follows:*Date Respondent Taken Into Custody**Time* AM PM**A. FOR USE WHEN RESPONDENT NOT CHARGED WITH VIOLENT CRIME**

1. The respondent was presented to an authorized examiner locally available as shown below.
2. The respondent was temporarily detained at the facility named below until the respondent could be examined by an authorized examiner locally available.

*Date Presented**Time* AM
 PM*Name Of Examiner**Name Of Local Facility*

1. Upon examination, the examiner named above found that the respondent did meet the criteria for outpatient commitment. I returned the respondent to his/her regular residence or to the home of a consenting person.
2. Upon examination, the examiner named above found that the respondent did meet the criteria for inpatient commitment.
- I transported the respondent and placed the respondent in the temporary custody of the 24-hour facility named below for observation and treatment.
- I placed the respondent in the custody of the agency named below for transportation to the 24-hour facility.
3. Upon examination, the examiner named above found that the respondent did not meet the criteria for inpatient or outpatient commitment. I returned the respondent to his/her regular residence or the home of a consenting person.

The examiner's written statement is attached. will be forwarded.*Name Of 24-Hour Facility**Date Delivered**Time Delivered* AM
 PM*Date Of Return**Name Of Transporting Agency**Signature Of Law Enforcement Official***B. FOR USE WHEN RESPONDENT CHARGED WITH VIOLENT CRIME**

- I transported the respondent directly to and placed him/her in the temporary custody of the facility named below.

*Name Of 24-Hour Facility**Date Delivered**Time Delivered* AM
 PM*Date Of Return**Name Of Transporting Agency**Signature Of Law Enforcement Official***C. FOR USE WHEN ANOTHER AGENCY TRANSPORTS THE RESPONDENT**

- I took custody of the respondent from the officer named above, transported the respondent and placed him/her in the temporary custody of the facility named below for observation and treatment.

*Name Of 24-Hour Facility**Date Delivered**Time Delivered* AM
 PM*Date Of Return**Name Of Transporting Agency**Signature And Rank Of Law Enforcement Official***D. FOR USE WHEN STATE FACILITY TRANSFERS WITHOUT ADMISSION**

- Pursuant to G.S. 122C-261(f), I took custody of the respondent from the state 24-hour facility named above, where he/she was not admitted, and transported the respondent and placed him/her in the temporary custody of the facility named below for observation and treatment.

*Name Of Facility To Which Transferred**Date Delivered**Time Delivered* AM
 PM*Date Of Return**Name Of Transporting Agency**Signature Of Law Enforcement Or State Facility Official*

STATE OF NORTH CAROLINA

Special Proceeding File No.

Criminal File No.

Additional File Nos.

In The General Court Of Justice
 District Superior Court Division

STATE VERSUS

Name Of Defendant/Respondent

Social Security No.

Has No Social Security No.

State Mental Health Facility Where Defendant/Respondent Is Committed

PETITION AND APPOINTMENT OF DEFENSE COUNSEL FOR COMMITTED RESPONDENT CHARGED WITH VIOLENT CRIME

G.S. 7A-451; 15A-1008, -1009; 122C-261(c), -268, -268.1, -270(a)

INSTRUCTIONS: Special Counsel at a state mental health facility completes Part I of this form to petition the Court for appointment of criminal defense counsel for a respondent who has been involuntarily committed after a finding of incapacity to proceed in a criminal case, and may be entitled to dismissal of the criminal charges pursuant to G.S. 15A-1008. The Court completes Part II of this form to assign or deny appointed counsel for the criminal case and completes AOC-CR-224. The Clerk records the criminal case appointment in the Automated Criminal Information System and provides a copy of the form to the appointed criminal defense attorney.

I. SPECIAL COUNSEL PETITION FOR APPOINTMENT OF DEFENSE COUNSEL

The above named defendant/respondent is charged in the above named county with the violent crime of (specify offense) _____, and was previously found by the Court to be incapable of proceeding to trial pursuant to G.S. 15A-1002 and involuntarily committed pursuant to G.S. 122C-268.

Upon information and belief, the defendant/respondent was previously found to be indigent and entitled to appointed counsel in the criminal case pursuant to G.S. 7A-450(a); was again found to be indigent pursuant to G.S. 122C-261(c) and -270(a), or refused to retain counsel in the commitment proceedings as provided in G.S. 122C-268(d) or -268.1(d); and has been committed since that time.

The criminal charge(s) identified above is still pending or has been dismissed with leave pursuant to G.S. 15A-1009.

The undersigned Special Counsel believes that (check all that apply):

- 1. The defendant/respondent will not gain capacity to proceed and the court may dismiss the criminal charge(s) pursuant to G.S. 15A-1008(1).
- 2. The defendant/respondent has been substantially deprived of his liberty for a period of time equal to or in excess of the maximum permissible period of confinement for the crime(s) charged and the court may dismiss the criminal charge(s) pursuant to G.S. 15A-1008(2).
- 3. The charge(s) identified above is a misdemeanor, 5 years have passed from the date of determination of incapacity to proceed in the case, and the court may dismiss the criminal charge(s) pursuant to G.S. 15A-1008(3).
- 4. The charge(s) identified above is a felony, 10 years have passed from the date of determination of incapacity to proceed in the case, and the court may dismiss the criminal charge(s) pursuant to G.S. 15A-1008(3).

I, the undersigned, am employed as Special Counsel at the above named state mental health facility and make application for appointment of a criminal defense attorney in the above named county to take appropriate action in the criminal case(s) pursuant to G.S. 15A-1008 and any other applicable provision of law.

Date

Signature Of Special Counsel

Name Of Special Counsel (Type Or Print)

II. ASSIGNMENT OR DENIAL OF COUNSEL

It appears to the Court that the above named defendant/respondent is charged in the above named county with a violent crime, which is a proceeding listed in G.S. 7A-451(a); and, after consideration of the prior indigency findings and involuntary commitment in this case, it is determined that the defendant/respondent:

- 1. is financially able to provide the necessary expenses of legal representation in the criminal case; it is ORDERED that the defendant/respondent is not an indigent and the petition is denied.
- 2. is **not** financially able to provide the necessary expenses of legal representation in the criminal case; it is ORDERED that the defendant/respondent is an indigent and is entitled to the services of counsel as contemplated by law, and that he/she shall be represented by: the attorney named below. the public defender in this judicial district.

It is further ORDERED that the Clerk of Superior Court shall record this appointment of counsel in the Automated Criminal Information System.

Name Of Appointed Criminal Defense Attorney (If Applicable)

Next Court Date

Date

Signature Of Judge

Name Of Judge (Type Or Print)

The Honorable _____

RE: In the matter of _____, HB 95
From _____ County, __ CR _____

Dear Judge _____

I am the Assistant Attorney General Assigned to _____ Hospital. The above named Respondent was admitted to this facility on _____, as a HB 95, pursuant to your order dated _____. It is my responsibility to represent the State's interest at the involuntary civil commitment hearing.

Respondent's involuntary civil commitment hearing will be held on _____ in _____ County District Court. The District Attorney has been notified of the hearing by separate letter. The purpose of this hearing will be to determine whether the Respondent is mentally ill or dangerous to himself or others as those terms are defined in Chapter 122C.

I have enclosed a brochure with information concerning the involuntary commitment process for persons who are incapable of proceeding to trial. I hope you find it helpful in answering any questions you may have.

The District Court involuntary commitment proceedings are sealed, and the health records of respondent created by the facility are confidential. However, I can release documents to you if you so order. There is a sample order in the brochure.

If you would like further information, or any documents of the proceedings, please contact me.

NORTH CAROLINA
_____ COUNTY

IN THE GENERAL COURT OF JUSTICE
_____ DIVISION
FILE NO: ___ CR_ _____

STATE OF NORTH CAROLINA

V.

DEFENDANT/RESPONDENT

)
)
)
)
)
)

ORDER

This cause coming on to be heard and being before the undersigned at the ____ Session of _____ County Criminal _____ Court, and it appearing to the Court that the above named defendant has been charged with a crime, and has been adjudicated incapable to proceed to trial on the offenses, and has been admitted or committed to _____ Hospital and has obtained treatment at that facility. In order for the Court to understand and assess the capacity and current mental status of the defendant, the Court needs to review the defendant's medical records, including the court orders and documents that are part of the involuntary commitment hearing file. Therefore, the undersigned orders _____ Hospital, or the Assistant Attorney General assigned to that facility to release the documents requested below to the undersigned, under seal.

Documents requested:

- Original order admitting respondent to facility
- Forensic evaluations
- Psychiatric evaluations prepared for commitment hearing
- Court Orders from commitment hearings

Entered this the ____ day of _____, 200__

Judge Presiding

The Honorable _____

RE: In the Matter of _____
From _____ County, __ CR _____

Dear Judge _____:

Pursuant to your order dated _____ enclosed please find the order entered by Judge _____ at the commitment hearing for the above named respondent. As you can see, the respondent was (discharged back to the county jail) (recommitted for a period not to exceed ____ days) (placed on outpatient commitment to ____ LME and discharged to the jail.) If you need further information concerning the process or this respondent, please give me a call.

Sincerely,

Assistant Attorney General