

§ 7B-2401. (Effective until January 1, 2025) 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. (1979, c. 815, s. 1; 1998-202, s. 6.)

§ 7B-2401. (Effective January 1, 2025) No proceedings when juvenile is not capable to proceed.

(a) No juvenile may be transferred to superior court for trial as an adult, adjudicated delinquent or undisciplined, or subject to disposition for an offense in juvenile court, including a violation of probation, when, by reason of mental disorder, intellectual disability, neurological disorder, traumatic or acquired brain injury, or developmental immaturity, the juvenile is unable to understand the nature and object of the proceedings against the juvenile, to comprehend the juvenile's own situation in reference to the proceedings, or to assist in the juvenile's own defense in a rational or reasonable manner.

(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 juvenile.

(c) This section does not apply to individuals over whom the juvenile court has jurisdiction pursuant to G.S. 7B-1601(d) through (d1) nor to any juvenile who is subject to transfer by indictment pursuant to G.S. 7B-2200 and G.S. 7B-2200.5(a)(1). Capacity to proceed under these circumstances shall not be addressed by the juvenile court. Capacity to proceed may be raised pursuant to Article 56 of Chapter 15A of the General Statutes if the superior court obtains jurisdiction of the proceeding. (1979, c. 815, s. 1; 1998-202, s. 6; 2023-114, s. 5(a).)

§ 7B-2401.1. (Effective January 1, 2025) Definitions.

The following definitions apply in this Article:

- (1) Developmental immaturity. – Incomplete development or delay associated with chronological age, which manifests as a functional limitation in one or more domains, including cognitive, emotional, and social development.
- (2) Division. – The Division of Juvenile Justice and Delinquency Prevention of the Department of Public Safety.
- (3) Forensic evaluation. – A forensic evaluation is a full examination by a forensic evaluator using evidence-based psychological tools to determine if a juvenile has the capacity to proceed. This evaluation shall consist of a review of all available prior mental health and educational records of the juvenile and IQ testing and may include other developmentally appropriate testing for juveniles deemed relevant by the forensic evaluator.
- (4) Forensic evaluation report. – The written report, by a forensic evaluator, that contains the information required by G.S. 7B-2401.3.
- (5) Incapacity to proceed. – By reason of mental disorder, intellectual disability, neurological disorder, traumatic or acquired brain injury, or developmental immaturity, the juvenile is unable to understand the nature and object of the proceedings against the juvenile, to comprehend the juvenile's own situation in reference to the proceedings, or to assist in the juvenile's own defense in a rational or reasonable manner.
- (6) Remediation. – Services 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. (2023-114, s. 5(b).)

§ 7B-2401.2. (Effective January 1, 2025) Procedures to determine capacity; hearing procedures; evidence.

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

(b) When the capacity of the juvenile to proceed is questioned, the court may appoint one or more forensic evaluators qualified by the Department of Health and Human Services to conduct forensic evaluations for juveniles to examine the juvenile and return a forensic evaluation report. 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. This subsection shall not be construed to limit the juvenile's right to retain his or her own expert or the State's right to obtain its own expert.

(c) At any time in the case of a juvenile that allegedly committed an offense that would be a felony if committed by an adult, the court may order the juvenile to a State facility for the mentally ill for observation and treatment for the period, not to exceed 60 days, necessary to determine the juvenile's capacity to proceed. If a juvenile is ordered to a State facility without first having an examination pursuant to subsection (b) of this section, the judge shall make a finding that an examination pursuant to this subsection would be more appropriate to determine the juvenile's capacity. The Division shall return the juvenile to the county when notified that the evaluation has been completed. The director of the facility shall direct his or her report on the juvenile's condition to the juvenile's 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.

(d) The forensic evaluation report shall be completed within 30 days of the date the forensic evaluation was ordered, consistent with this section. The court may extend the time for completion of the forensic evaluation for good cause shown. The forensic evaluation report shall be provided to the court as follows:

- (1) The report in a case of a juvenile who is alleged to have committed an offense that would be a misdemeanor if committed by an adult shall be completed and provided to the court no later than 10 days following the completion of the evaluation for a juvenile.
- (2) The report in the case of a juvenile who is alleged to have committed an offense that would be a felony if committed by an adult shall be completed and provided to the court no later than 30 days following the completion of the evaluation.
- (3) In cases where the juvenile challenges the determination made by the court-ordered evaluator and the court orders an independent evaluation, that evaluation 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 forensic evaluation 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 juvenile 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.

(e) 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 juvenile and any conclusion as to whether the juvenile has or lacks capacity to proceed. If the juvenile is being held in the custody of the Division, the clerk shall send a copy of the covering statement to the Division. The Division and any persons employed by the Division shall maintain the copy of the covering statement as a confidential record. A copy of the full report shall be forwarded to the juvenile's counsel. If the

question of the juvenile's capacity to proceed is raised at any time, a copy of the full report must be forwarded to the prosecutor. Until the question of the juvenile's capacity is raised, 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 the report and the relevant confidential information previously ordered released under G.S. 7B-2401.3(c) shall be released to the program where the juvenile is receiving remediation services and as directed by the court. Any report made to the court pursuant to this section shall be maintained as a confidential record.

(f) For any juvenile who is alleged to be delinquent and is less than 12 years of age, the court shall inquire of the prosecutor and the juvenile's attorney regarding the juvenile's capacity to proceed the first time the juvenile appears in court. If the prosecutor or the juvenile's attorney requests additional time to determine whether it is necessary to raise the question of the juvenile's capacity to proceed, the court shall allow the question of capacity to be raised at any time pursuant to subsection (a) of this section.

(g) An order for a forensic evaluation shall stay juvenile proceedings, with the exception of hearings to review the need for continued nonsecure or secure custody and proceedings related to the transfer of jurisdiction by indictment pursuant to G.S. 7B-2200.5(a), until capacity has been determined pursuant to this Subchapter.

(h) When the capacity of the juvenile to proceed is questioned, the court shall hold a hearing to determine the juvenile's capacity to proceed. If an evaluation is ordered pursuant to subsection (b) of this section, the hearing shall be held upon receipt of the forensic evaluation report. The clerk shall provide notice to the juvenile and the prosecutor in accordance with G.S. 7B-1807. The order of the court shall contain findings of fact to support its determination of the juvenile's capacity to proceed. The parties may stipulate that the juvenile is capable to proceed but shall not be allowed to stipulate that the juvenile lacks capacity to proceed. If the court finds the juvenile is capable to proceed, the juvenile proceedings shall no longer be stayed, and the court shall set a date for such further proceedings. If the juvenile's capacity to proceed is contested, the juvenile bears the burden of proving the juvenile is incapable to proceed by a preponderance of the evidence. At a contested hearing, the State and the juvenile may call witnesses and present evidence. Nothing in this subsection may be construed to prohibit the State or the juvenile from calling other expert witnesses to testify at a capacity hearing. If appropriate, the court may order remediation services in accordance with G.S. 7B-2401.4.

(i) A juvenile who has been found incapable to proceed by the court shall not be subject to transfer, adjudication, disposition, or modification of disposition so long as the incapacity exists pursuant to this Article.

(j) If the court orders a forensic evaluation, the court shall order that the evaluation be conducted in the least restrictive environment, considering the best interests of the juvenile and the safety of the public. The forensic evaluation may be conducted in any location in this State. The forensic evaluation may be conducted outside of this State for juveniles in residential facilities on an individual basis as indicated by the order of the court.

(k) The Division shall arrange for the transportation of juveniles who are confined in secure custody to the ordered location of the forensic evaluation. (2023-114, s. 5(b).)

§ 7B-2401.3. (Effective January 1, 2025) Juvenile forensic evaluation credentialing; conducting forensic evaluations; written reports; compensation of experts.

(a) The Department of Health and Human Services shall designate and oversee a credentialing body which will set and maintain the minimum standards to qualify professionals who are court-appointed to conduct forensic evaluations as ordered pursuant to G.S. 7B-2401.2. The credentialing body shall determine that a qualified professional has demonstrated knowledge and experience with age-appropriate and developmentally appropriate methods for evaluating juvenile functional capacities to proceed. This subsection shall not be construed to limit the juvenile's right to retain his or her own expert.

(b) Qualified professionals who have been conducting forensic evaluations of juveniles prior to enactment of this section shall be deemed to possess the minimum requirements to become an evaluator. Such qualified professionals shall be required to satisfy the qualification standards developed by the Department of Health and Human Services within 12 months of the adoption of those standards pursuant to subsection (a) of this section.

(c) A presiding district court judge of this State who orders an examination pursuant to G.S. 7B-2401.2 shall order the release of relevant confidential information to the forensic evaluator, including the juvenile petition, orders for secure or nonsecure custody, the law enforcement incident report, the juvenile's delinquency history, detention records, any prior medical and mental health records of the juvenile, and any school records of the juvenile after providing the juvenile 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 subsection 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. The records shall be withheld from public inspection and, except as provided in this subsection, may be examined only by order of the court.

(d) No statement or disclosure made by the juvenile during the forensic evaluation regarding the juvenile's responsibility for a criminal act that can result either in an adjudication of delinquency or transfer of a matter to superior court for trial as an adult is admissible in any juvenile or criminal proceeding against the juvenile or defendant. The forensic evaluation shall not include any such statement.

(e) The forensic evaluator shall consider all of the following as part of the forensic evaluation:

- (1) Whether the juvenile is capable to proceed, incapable to proceed, or incapable to proceed with an ability to attain capacity in the foreseeable future with remediation services.
- (2) The basis of the juvenile's incapacity, to include mental disorder, intellectual disability, neurological disorder, traumatic or acquired brain injury, or developmental immaturity.
- (3) The capacity of the juvenile to do any of the following:
 - a. Appreciate the allegations against the juvenile.
 - b. Appreciate the range and nature of allowable dispositions that may be imposed in the proceedings against the juvenile.
 - c. Understand the roles of the participants and the adversary nature of the legal process.
 - d. Disclose to counsel facts pertinent to the proceedings at issue.
 - e. Display appropriate courtroom behavior.
 - f. Testify regarding the relevant issues.

- g. Make reasonable and rational decisions.
 - h. Assist in the juvenile's defense in a rational manner.
 - i. Any other factors that the forensic evaluator deems to be relevant.
- (f) Written forensic reports submitted to the court shall consist of and contain all of the following:
- (1) Identify the specific matters referred to the forensic evaluator by the juvenile court for evaluation.
 - (2) Include notification to the juvenile of the nature, purpose, and anticipated use or uses of the examination and applicable limits of confidentiality.
 - (3) Describe the procedures, techniques, and tests used in the forensic evaluation of the juvenile and the purposes of each.
 - (4) Describe the considerations considered by the forensic evaluator.
 - (5) State any clinical observations, findings, and opinions of the forensic evaluator on each issue referred to the forensic evaluator for evaluation by the court and specifically indicate any issues on which the forensic evaluator was unable to give an opinion.
 - (6) Identify the sources of information used by the forensic evaluator and present the factual basis for any clinical observations, findings, and opinions of the forensic evaluator.
 - (7) Address any other issues ordered by the court.
- (g) If a forensic evaluator is of the opinion that a juvenile is incapable to proceed, the written forensic report shall contain all of the additional information:
- (1) Any recommended treatment or education needed for the juvenile to attain capacity, if any.
 - (2) The likelihood that the juvenile will attain capacity in the foreseeable future because of the recommended treatment or education.
 - (3) An assessment of the probable duration of the treatment or education required to attain capacity.
 - (4) If the forensic evaluator recommends treatment for the juvenile to attain capacity, a recommendation as to the least restrictive environment in which services can be provided to the juvenile.
- (h) Any forensic evaluator appointed by the court to conduct a forensic evaluation, ordered pursuant to G.S. 7B-2401.2, shall receive a reasonable fee for such service. The fee shall be determined for each forensic evaluation by the appointing court, in accordance with reimbursement guidelines maintained by the North Carolina Administrative Office of the Courts. If any such forensic evaluator is required to appear as a witness in any hearing held pursuant to this section, the forensic evaluator shall receive reimbursement for expenses according to guidelines maintained by the North Carolina Administrative Office of the Courts. (2023-114, s. 5(b).)

§ 7B-2401.4. (Effective January 1, 2025) Remediation.

(a) The purpose of remediation ordered pursuant to this section shall be for the juvenile to attain capacity to proceed.

(b) When the court finds the juvenile incapable to proceed, and substantially likely to attain capacity in the foreseeable future, the court may order remediation services. The remediation services shall be based on the recommendations from the forensic evaluation.

(c) Remediation services shall be provided in the least restrictive environment considering the best interests of the juvenile and the safety of the public. In addition, the court shall consider the following when determining where services may be rendered:

- (1) Whether there is probable cause to believe the allegations in the petition are true.
- (2) The nature of the incapacity.
- (3) The juvenile's age or developmental maturity.
- (4) The nature of the act alleged to have been committed and the seriousness of the offense.
- (5) The availability and appropriateness of programming in the juvenile's community.
- (6) Supervision needs and level of available community supervision or alternatives such as family members, custodians, guardians, and community-based programs.
- (7) Any prior treatment or interventions provided to the juvenile.
- (8) Any other relevant factors not previously specified.

(d) When the juvenile is found incapable to proceed based on mental disorder, intellectual disability, neurological disorder, or traumatic or acquired brain injury but substantially likely to attain capacity, and the court finds that all available less restrictive alternatives are inappropriate, the court may enter an order in accordance with G.S. 7B-2401.5 for the juvenile to be assessed for an involuntary commitment pursuant to Chapter 122C of the General Statutes.

(e) An order for remediation services shall contain all of the following:

- (1) Written findings of fact regarding the least restrictive environment for the remediation services.
- (2) If the court order allows for secure confinement pursuant to subsection (d) of this section, the maximum time for placement in a secure facility shall be pursuant to subsection (f) of this section.

(f) If the court finds that the juvenile is incapable of proceeding and substantially likely to attain capacity in the foreseeable future, the court shall enforce the following time limitations on remediation services. In the case of a probation violation, the underlying offense shall serve as the most serious offense as used in this section:

- (1) If the most serious offense alleged in the petition is first degree murder (G.S. 14-17), first-degree forcible rape (G.S. 14-27.21), first-degree statutory rape (G.S. 14-27.24), first-degree forcible sexual offense (G.S. 14-27.26), or first-degree statutory sexual offense (G.S. 14-27.29) if committed by an adult, remediation shall not exceed 36 months beyond the original finding of incapacity to proceed or the maximum jurisdiction of the court as provided in G.S. 7B-1601, whichever occurs sooner.
- (2) If the most serious offense alleged in the petition is a Class B1, B2, C, D, or E felony if committed by an adult, other than an offense set forth in subdivision (1) of this subsection, remediation shall not exceed 12 months beyond the original finding of incapacity to proceed, or the maximum jurisdiction of the court as provided in G.S. 7B-1601, whichever occurs sooner. The court for good cause may grant an extension of up to 12 months for remediation. If an

extension is granted, remediation shall not exceed 24 months beyond the original finding of incapacity to proceed, or the maximum jurisdiction of the court as provided in G.S. 7B-1601, whichever occurs sooner.

- (3) If the most serious offense alleged in the petition is a Class F, G, H, or I felony or any misdemeanor if committed by an adult, remediation shall not exceed six months beyond the original finding of incapacity to proceed, or the maximum jurisdiction of the court as provided in G.S. 7B-1601, whichever occurs sooner. The court may grant an extension of up to six months for remediation. If an extension is granted, remediation shall not exceed 12 months beyond the original finding of incapacity to proceed, or the maximum jurisdiction of the court as provided in G.S. 7B-1601, whichever occurs sooner.

- (4) In no case shall the court grant extensions of time for the remediation services beyond the maximum jurisdiction of the court as provided in G.S. 7B-1601.

(g) The Division shall be responsible for the provision of psychoeducation remediation programming and working with community partners to secure any additional services recommended in the forensic evaluation report. The Division is authorized to contract with the University of North Carolina at Chapel Hill or any other qualified educational organization to develop and conduct related trainings and curriculum.

The remediation service provider shall provide reports to the court at least every 90 days. Any report made to the court pursuant to this subsection shall be forwarded to the clerk of superior court addressed to the attention of the presiding judge. A report provided under this subsection shall include all of the following:

- (1) The dates of any services provided to the juvenile.
- (2) A summary of the juvenile's attendance and participation.
- (3) Information about the juvenile's progress in the areas that were found to be relevant to the juvenile's incapacity, including education regarding court procedures and stabilization or improvement of symptoms leading to functional impairments.

No statement or disclosure made by the juvenile during the remediation services regarding the juvenile's responsibility for a criminal act that can result either in an adjudication of delinquency or transfer of a matter to superior court for trial as an adult is admissible in any juvenile or criminal proceeding against the juvenile or defendant. All remediation progress reports, summaries, and notes shall not include any such statement.

The court shall hold a hearing within 30 days of receipt of the remediation progress report to review the remediation services. The remediation review hearing may be informal, and the court may consider all remediation progress reports. The court may consider any evidence, including hearsay evidence as defined in G.S. 8C-1, Rule 801, that the court finds to be relevant, reliable, and necessary to determine if remediation services should continue or reassessment of capacity is warranted. The juvenile and the juvenile's parent, guardian, or custodian shall have an opportunity to present evidence, and they may advise the court concerning the remediation services. The order of the court may be amended or supplemented only as provided in this Subchapter and only after notice and a hearing.

(h) If the court determines that reassessment of capacity is warranted, the court shall order a new forensic evaluation. This forensic evaluation shall be performed by the original forensic evaluator when possible and comply with the requirements of G.S. 7B-2401.3. Any initial forensic evaluation or reevaluation shall be conducted independently of the remediation services and shall not be conducted by the remediation specialist for the juvenile.

(i) If, at any time during the remediation treatment, the remediation service provider finds that the juvenile has likely completed the requirements of the remediation services, the

remediation service provider shall provide written notification to the court, the prosecutor, and the juvenile's attorney within two business days regarding this finding. A copy of any remediation report or reports shall be forwarded to the court and to the juvenile's attorney. The court may order the release of a remediation report to the prosecutor after providing the juvenile 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 subsection 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 shall be withheld from public inspection and, except as provided in this subsection, may be examined only by order of the court. The juvenile's matter shall be returned to court within a reasonable time, and not more than 30 days after the completion of remediation services, for review or further proceedings. (2023-114, s. 5(b).)

§ 7B-2401.5. (Effective January 1, 2025) Involuntary commitment; dismissal; seal records.

(a) When the court finds that a juvenile is incapable to proceed and not likely to attain capacity in the foreseeable future, the court may conduct an additional hearing, as the court determines to be necessary, to determine whether there are reasonable grounds to believe the juvenile 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 juvenile meets the criteria, the judge 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 juvenile allegedly committed 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 juvenile directly to a 24-hour facility as described in G.S. 122C-252. The order must also indicate that the juvenile allegedly committed a violent crime and that the juvenile was found incapable of proceeding. Evidence used at the hearing regarding capacity to proceed is admissible in the involuntary civil commitment proceedings.

(b) When the court finds that a juvenile is incapable to proceed and not likely to attain capacity in the foreseeable future, the court shall dismiss the petition.

(c) The prosecutor may voluntarily dismiss with leave any allegations stated in the petition, pursuant to G.S. 7B-2404, prior to the termination of the jurisdiction of the court as provided in G.S. 7B-1601.

(d) After the completion of all capacity hearings or after a juvenile has been found not to be substantially likely to be restored to or to attain capacity in the foreseeable future, the court shall direct the clerk to seal all forensic evaluations, remediation reports, and any other records pertaining to the capacity of the juvenile, pursuant to G.S. 7B-3000(c). Any records sealed pursuant to this subsection may be opened or inspected only by order of the court or for appellate review. (2023-114, s. 5(b).)