

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2013

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HOUSE BILL 88*

Short Title: Incapacity to Proceed Amendments. (Public)

Sponsors: Representative Hurley (Primary Sponsor).
For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Judiciary Subcommittee B.

February 12, 2013

A BILL TO BE ENTITLED
AN ACT TO AMEND THE LAWS GOVERNING INCAPACITY TO PROCEED.
The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1002 reads as rewritten:

"§ 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~~In the case of a defendant charged with a misdemeanor or felony, the court 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 health. Reports so prepared are admissible at the hearing and the hearing. 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 hearing, with or without the request of either party; or party.

(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~~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 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 proceed. 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 capacity. The



1 sheriff shall return the defendant to the county when notified that the
2 evaluation has been ~~completed~~; ~~the~~completed. The director of the facility
3 shall direct his report on defendant's condition to the defense attorney and to
4 the clerk of superior court, who shall bring it to the attention of the ~~court~~;
5 ~~the~~court. The report is admissible at the hearing.

6 (3) Repealed by Session Laws 1989, c. 486, s. 1.

7 (4) A presiding district or superior court judge of this State who orders an
8 examination pursuant to subdivision (1) or (2) of this subsection shall order
9 the release of relevant confidential information to the examiner, including,
10 but not limited to, the warrant or indictment, arrest records, the law
11 enforcement incident report, the defendant's criminal record, jail records, any
12 prior medical and mental health records of the defendant, and any school
13 records of the defendant, after providing the defendant with reasonable
14 notice and an opportunity to be heard and then determining that the
15 information is relevant and necessary to the hearing of the matter before the
16 court and unavailable from any other source. This subdivision shall not be
17 construed to relieve any court of its duty to conduct hearings and make
18 findings required under relevant federal law before ordering the release of
19 any private medical or mental health information or records related to
20 substance abuse or HIV status or treatment. The records may be surrendered
21 to the court, for in camera review, if surrender is necessary to make the
22 required determinations. The records shall be withheld from public
23 inspection and, except as provided in this subdivision, may be examined
24 only by order of the court.

25 (b1) ~~If the report pursuant to subdivision (1) or (2) of subsection (b) of this section~~
26 ~~indicates~~ The order of the court shall contain findings of fact to support its determination of the
27 defendant's capacity to proceed. The parties may stipulate that the defendant is capable of
28 proceeding but shall not be allowed to stipulate that the defendant lacks capacity to proceed. If
29 the court concludes that the defendant lacks capacity to proceed, proceedings for involuntary
30 civil commitment under Chapter 122C of the General Statutes may be instituted on the basis of
31 the report in either the county where the criminal proceedings are pending or, if the defendant
32 is hospitalized, in the county in which the defendant is hospitalized.

33 (b2) Reports made to the court pursuant to this section shall be completed and provided
34 to the court as follows:

35 (1) The report in a case of a defendant charged with a misdemeanor shall be
36 completed and provided to the court no later than 10 days following the
37 completion of the examination for a defendant who was in custody at the
38 time the examination order was entered, and no later than 20 days following
39 the completion of the examination for a defendant who was not in custody at
40 the time the examination order was entered.

41 (2) The report in the case of a defendant charged with a felony shall be
42 completed and provided to the court no later than 30 days following the
43 completion of the examination.

44 (3) In cases where the defendant challenges the determination made by the
45 court-ordered examiner or the State facility and the court orders an
46 independent psychiatric examination, that examination and report to the
47 court must be completed within 60 days of the entry of the order by the
48 court.

49 The court may, for good cause shown, extend the time for the provision of the report to the
50 court for up to 30 additional days. The court may renew an extension of time for an additional
51 30 days upon request of the State or the defendant prior to the expiration of the previous

1 extension. In no case shall the court grant extensions totaling more than 120 days beyond the
2 time periods otherwise provided in this subsection.

3 (c) The court may make appropriate temporary orders for the confinement or security of
4 the defendant pending the hearing or ruling of the court on the question of the capacity of the
5 defendant to proceed.

6 (d) Any report made to the court pursuant to this section shall be forwarded to the clerk
7 of superior court in a sealed envelope addressed to the attention of a presiding judge, with a
8 covering statement to the clerk of the fact of the examination of the defendant and any
9 conclusion as to whether the defendant has or lacks capacity to proceed. If the defendant is
10 being held in the custody of the sheriff, the clerk shall send a copy of the covering statement to
11 the sheriff. The sheriff, and any persons employed by the sheriff, shall maintain the copy of the
12 covering statement as a confidential record. A copy of the full report shall be forwarded to
13 defense counsel, or to the defendant if he is not represented by counsel provided, if counsel. If
14 the question of the defendant's capacity to proceed is raised at any time, a copy of the full
15 report must be forwarded to the district attorney-attorney, as provided in G.S. 122C-54(b). Until
16 such report becomes a public record, the full report to the court shall be kept under such
17 conditions as are directed by the court, and its contents shall not be revealed except as directed
18 by the court. Any report made to the court pursuant to this section shall not be a public record
19 unless introduced into evidence."

20 **SECTION 2.** G.S. 15A-1004(c) reads as rewritten:

21 "(c) If the defendant is placed in the custody of a hospital or other institution in a
22 proceeding for involuntary civil commitment, the orders must provide for reporting to the clerk
23 if the defendant is to be released from the custody of the hospital or institution. The original or
24 supplemental orders may make provisions as in subsection (b) in the event that the defendant is
25 released. The court shall also order that the defendant shall be examined to determine whether
26 the defendant has the capacity to proceed prior to release from custody. A report of the
27 examination shall be provided pursuant to G.S. 15A-1002. If the defendant was charged with a
28 violent crime, including a crime involving assault with a deadly weapon, and that charge has
29 not been dismissed, the order must require that if the defendant is to be released from the
30 custody of the hospital or other institution, he is to be released only to the custody of a
31 specified law enforcement agency. If the original or supplemental orders do not specify to
32 whom the respondent shall be released, the hospital or other institution may release the
33 defendant to whomever it thinks appropriate."

34 **SECTION 3.** G.S. 15A-1006 reads as rewritten:

35 **"§ 15A-1006. Return of defendant for trial upon gaining capacity.**

36 If a defendant who has been determined to be incapable of proceeding, and who is in the
37 custody of an institution or an individual, ~~gains~~ has been determined by the institution or
38 individual having custody to have gained capacity to proceed, the individual or institution must
39 notify shall provide written notification to the clerk in the county in which the criminal
40 proceeding is pending. The clerk must notify the sheriff to shall provide written notification to
41 the district attorney, the defendant's attorney, and the sheriff. The sheriff shall return the
42 defendant to the county for supplemental hearing pursuant to G.S. 15A-1007, if conducted, and
43 trial, trial and to hold him the defendant for supplemental hearing and trial, subject to the orders
44 of the court entered pursuant to G.S. 15A-1004."

45 **SECTION 4.** G.S. 15A-1007 reads as rewritten:

46 **"§ 15A-1007. Supplemental hearings.**

47 (a) When it has been reported to the court that a defendant has gained capacity to
48 proceed, or when the defendant has been determined by the individual or institution having
49 custody of him to have gained capacity and has been returned for ~~trial, the trial,~~ in accordance
50 with G.S. 15A-1004(e) and G.S. 15A-1006, the clerk shall notify the district attorney. Upon
51 receiving the notification, the district attorney shall calendar the matter for hearing at the next

1 available term of court, but no later than 30 days after receiving the notification. The court may
2 hold a supplemental hearing to determine whether the defendant has capacity to proceed. The
3 court may take any action at the supplemental hearing that it could have taken at an original
4 hearing to determine the capacity of the defendant to proceed.

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

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

9 (d) If the court determines in a supplemental hearing that a defendant has gained the
10 capacity to proceed, the case shall be calendared for trial at the earliest practicable time.
11 Continuances that extend beyond 60 days after initial calendaring of the trial shall be granted
12 only in extraordinary circumstances when necessary for the proper administration of justice,
13 and the court shall issue a written order stating the grounds for granting the continuance."

14 **SECTION 5.** G.S. 15A-1008 reads as rewritten:

15 "**§ 15A-1008. Dismissal of charges.**

16 (a) When a defendant lacks capacity to proceed, the court ~~may~~shall dismiss the
17 ~~charges;~~charges upon the earliest of the following occurrences:

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

20 (2) When the defendant has been substantially deprived of his liberty for a
21 period of time equal to or in excess of the ~~maximum permissible period of~~
22 ~~confinement for the crime or crimes charged;~~ maximum term of
23 imprisonment permissible for prior record level VI for felonies or prior
24 conviction level III for misdemeanors for the most serious offense charged.

25 (3) Upon the expiration of a period of five years from the date of determination
26 of incapacity to proceed in the case of misdemeanor charges and a period of
27 10 years in the case of felony charges.

28 (b) A dismissal entered pursuant to subdivision (2) of subsection (a) of this section shall
29 be without leave.

30 (c) A dismissal entered pursuant to subdivision (1) or (3) of subsection (a) of this
31 section shall be issued without prejudice to the refileing of the charges. Upon the defendant
32 becoming capable of proceeding, the prosecutor may reinstitute proceeding dismissed pursuant
33 to subdivision (1) or (3) of subsection (a) of this section by filing written notice with the clerk,
34 with the defendant, and with the defendant's attorney of record.

35 (d) Dismissal of criminal charges pursuant to this section shall be upon motion of the
36 prosecutor or the defendant, or upon the court's own motion."

37 **SECTION 6.** G.S. 15A-1009 is repealed.

38 **SECTION 7.** G.S. 122C-54(b) reads as rewritten:

39 "(b) If an individual is a defendant in a criminal case and a mental examination of the
40 defendant has been ordered by the court as provided in G.S. 15A-1002, the facility shall send
41 the results or the report of the mental examination to the clerk of court, to the district attorney
42 or prosecuting officer, and to the attorney of record for the defendant as provided in
43 G.S. 15A-1002(d). The report shall contain a treatment recommendation, if any, and any
44 opinion as to whether there is a likelihood that the defendant will gain the capacity to proceed."

45 **SECTION 8.** Part 7 of Article 5 of Chapter 122C is amended by adding a new
46 section to read:

47 "**§ 122C-278. Reexamination for capacity to proceed prior to discharge.**

48 Whenever a respondent has been committed to either inpatient or outpatient treatment
49 pursuant to this Chapter after having been found incapable of proceeding and referred by the
50 court for civil commitment proceedings, the respondent shall not be discharged from the
51 custody of the hospital or institution, or the outpatient commitment case terminated, until the

1 respondent has been examined for capacity to proceed and a report filed with the clerk of court
2 pursuant to G.S. 15A-1002."

3 **SECTION 9.** The Commission for Mental Health, Developmental Disabilities, and
4 Substance Abuse Services shall develop and adopt rules by December 1, 2013, to require
5 forensic evaluators appointed pursuant to G.S. 15A-1002(b) to meet the following
6 requirements:

7 (1) Complete all training requirements necessary to be credentialed as a certified
8 forensic evaluator.

9 (2) Attend annual continuing education seminars that provide continuing
10 education and training in conducting forensic evaluations and screening
11 examinations of defendants to determine capacity to proceed and preparation
12 of written reports required by law.

13 **SECTION 10.** The Commission for Mental Health, Developmental Disabilities,
14 and Substance Abuse Services shall, by December 1, 2013, adopt guidelines for treatment of
15 individuals who are involuntarily committed following a determination of incapacity to proceed
16 and a referral pursuant to G.S. 15A-1003. The guidelines shall require a treatment plan that
17 uses best practices in an effort to restore the individual's capacity to proceed in the criminal
18 matter.

19 **SECTION 11.** Sections 1 through 8 of this act become effective December 1,
20 2013, and apply to offenses committed on or after that date. The remainder of this act is
21 effective when it becomes law.