

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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SENATE BILL 388
House Committee Substitute Favorable 6/21/17

Short Title: Incapacity to Proceed.

(Public)

Sponsors:

Referred to:

March 27, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW REPORTS RECEIVED BY THE COURT ON THE LACK OF
3 CAPACITY TO PROCEED TO BE SHARED WITH TREATMENT PROVIDERS AND
4 TO STUDY THE LACK OF CAPACITY TO PROCEED PROCESS.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 15A-1002(d) reads as rewritten:

7 "(d) Any report made to the court pursuant to this section shall be forwarded to the clerk
8 of superior court in a sealed envelope addressed to the attention of a presiding judge, with a
9 covering statement to the clerk of the fact of the examination of the defendant and any
10 conclusion as to whether the defendant has or lacks capacity to proceed. If the defendant is
11 being held in the custody of the sheriff, the clerk shall send a copy of the covering statement to
12 the sheriff. The sheriff and any persons employed by the sheriff shall maintain the copy of the
13 covering statement as a confidential record. A copy of the full report shall be forwarded to
14 defense counsel or to the defendant if he is not represented by counsel. If the question of the
15 defendant's capacity to proceed is raised at any time, a copy of the full report must be
16 forwarded to the district attorney, as provided in G.S. 122C-54(b). Until such report becomes a
17 public record, the full report to the court shall be kept under such conditions as are directed by
18 the court, and its contents shall not be revealed except the report and the relevant confidential
19 information previously ordered released under subdivision (b)(4) of this section shall be
20 released as follows: (i) to clinicians at the program where the defendant is receiving capacity
21 restoration; (ii) to clinicians designated by the Secretary of Health and Human Services, and
22 (iii) as directed by the court. Any report made to the court pursuant to this section shall not be a
23 public record unless introduced into evidence."

24 SECTION 2. The Department of Health and Human Services shall convene a
25 workgroup to evaluate the laws governing the lack of capacity to proceed process, including the
26 impact of the laws on the limited resources of the community mental health system, hospitals,
27 state psychiatric hospitals, local law enforcement, court system, jails, crime victims, and
28 criminal defendants. The workgroup shall be comprised of criminal justice and mental health
29 experts who work directly with individuals who have been determined to lack the capacity to
30 proceed and shall include at least one representative from each of the following groups,
31 agencies, or organizations:

- 32 (1) The Attorney General or his designee.
- 33 (2) The Director of the Administrative Office of the Courts or his designee.
- 34 (3) The President of the Conference of District Attorneys or his designee.
- 35 (4) The President of the Association of Defense Attorneys or his designee.
- 36 (5) The President of the Sheriff's Association or his designee.



- 1 (6) The President of the District Court Judges Association or his designee.
- 2 (7) The President of the Superior Court Judges Association or his designee.
- 3 (8) A forensic expert from a State Psychiatric Hospital.
- 4 (9) An advocate for individuals who have been determined to lack the capacity
- 5 to proceed.

6 **SECTION 3.(a)** Preliminary report. – The Department of Health and Human
7 Services shall present preliminary findings of the workgroup to the following stakeholder
8 organizations:

- 9 (1) North Carolina Sheriff's Association.
- 10 (2) North Carolina Psychiatric Association.
- 11 (3) North Carolina Council of Community Programs.
- 12 (4) North Carolina Conference of District Attorneys.
- 13 (5) North Carolina Hospital Association.
- 14 (6) North Carolina Association of County Commissioners.
- 15 (7) National Alliance on Mental Illness.
- 16 (8) North Carolina Indigent Defense Services.

17 **SECTION 3.(b)** Final report. – After consultation with these stakeholder
18 organizations, the workgroup shall finalize recommendations for improvements to the system,
19 including any legislative proposals, and the Department of Health and Human Services shall
20 report to the Joint Legislative Oversight Committees on Health and Human Services and on
21 Justice and Public Safety by February 1, 2018. The report shall include findings and
22 recommendations on the following:

- 23 (1) Issues within the system that impact an individual who lacks capacity to
- 24 proceed to trial and the process to determine capacity.
- 25 (2) Issues that create barriers within the system that negatively impact service
- 26 providers, including jails, courts, hospitals, and law enforcement agencies, in
- 27 their efforts to serve an individual who lacks the capacity to proceed.
- 28 (3) Solutions to reduce the number of persons who lack the capacity to proceed;
- 29 the number of persons who are referred to the State psychiatric hospitals;
- 30 and the number of stays in the hospitals beyond the clinical needs of the
- 31 person who lacks the capacity to proceed.

32 **SECTION 4.** This act is effective when it becomes law.