



In Court and Incapable to Proceed

The legal process for dealing with ITP defendants



NCGS
15A-1001

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, or
- to comprehend his own situation in reference to the proceedings, or
- to assist in his defense in a rational or reasonable manner.



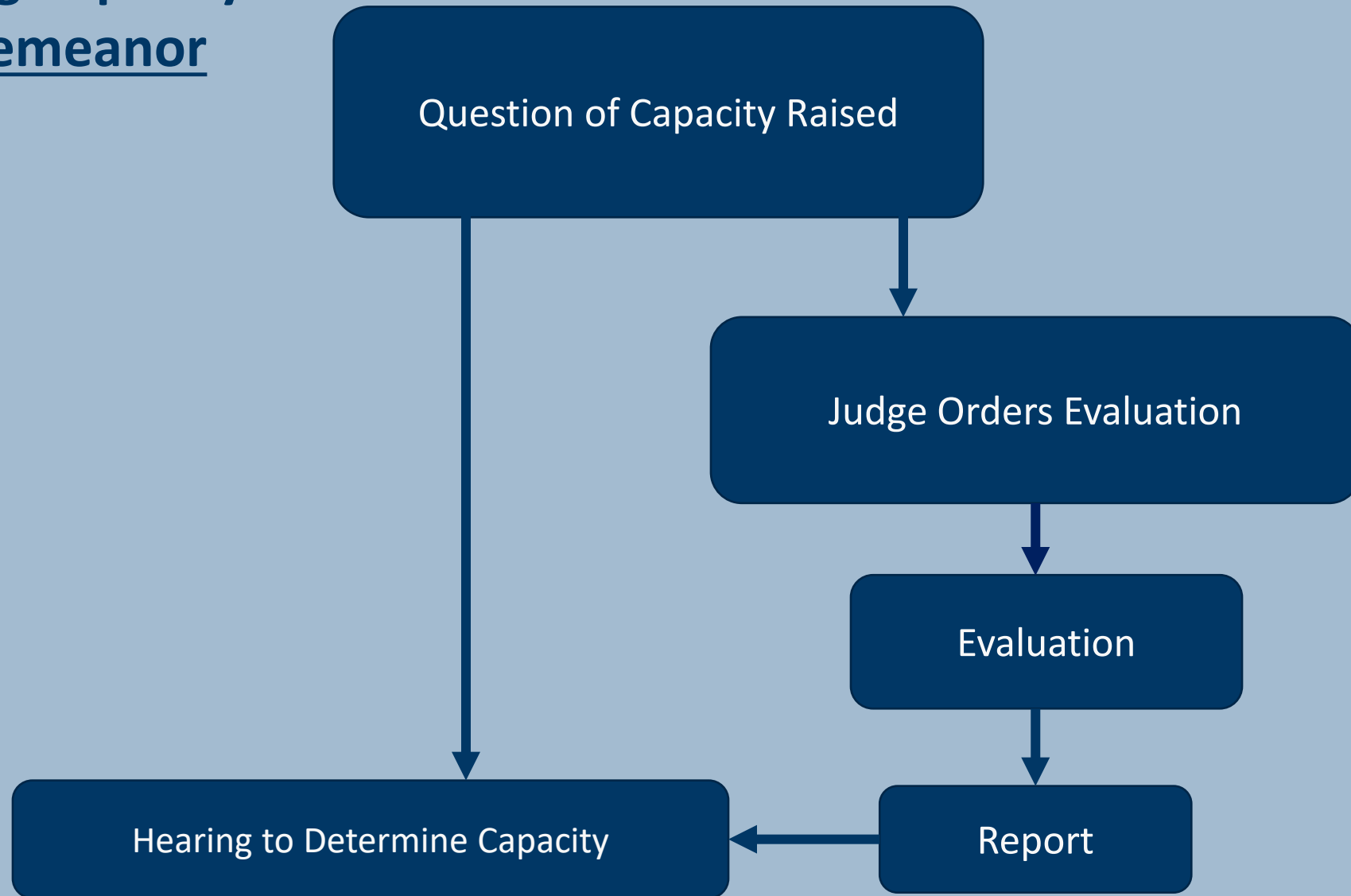
NCGS
15A-1002

- Question of capacity can be raised at any time by any party—prosecutor, defense attorney, defendant, or court.
- If issue is raised, the court shall hold a hearing to determine the defendant's capacity to proceed.
- Forensic evaluation is not required. Court may make its own determination without any input from mental health professionals.

Forensic evaluations for misdemeanors must be done through a local forensic evaluator. There is no option for an evaluation at Central Regional Hospital for misdemeanors.



Determining Capacity For Misdemeanor



The image features a decorative background consisting of three overlapping circles in shades of blue, positioned horizontally. A solid dark blue horizontal bar spans the width of the image, centered vertically. The text is centered within this bar.

What if the charge is a felony?



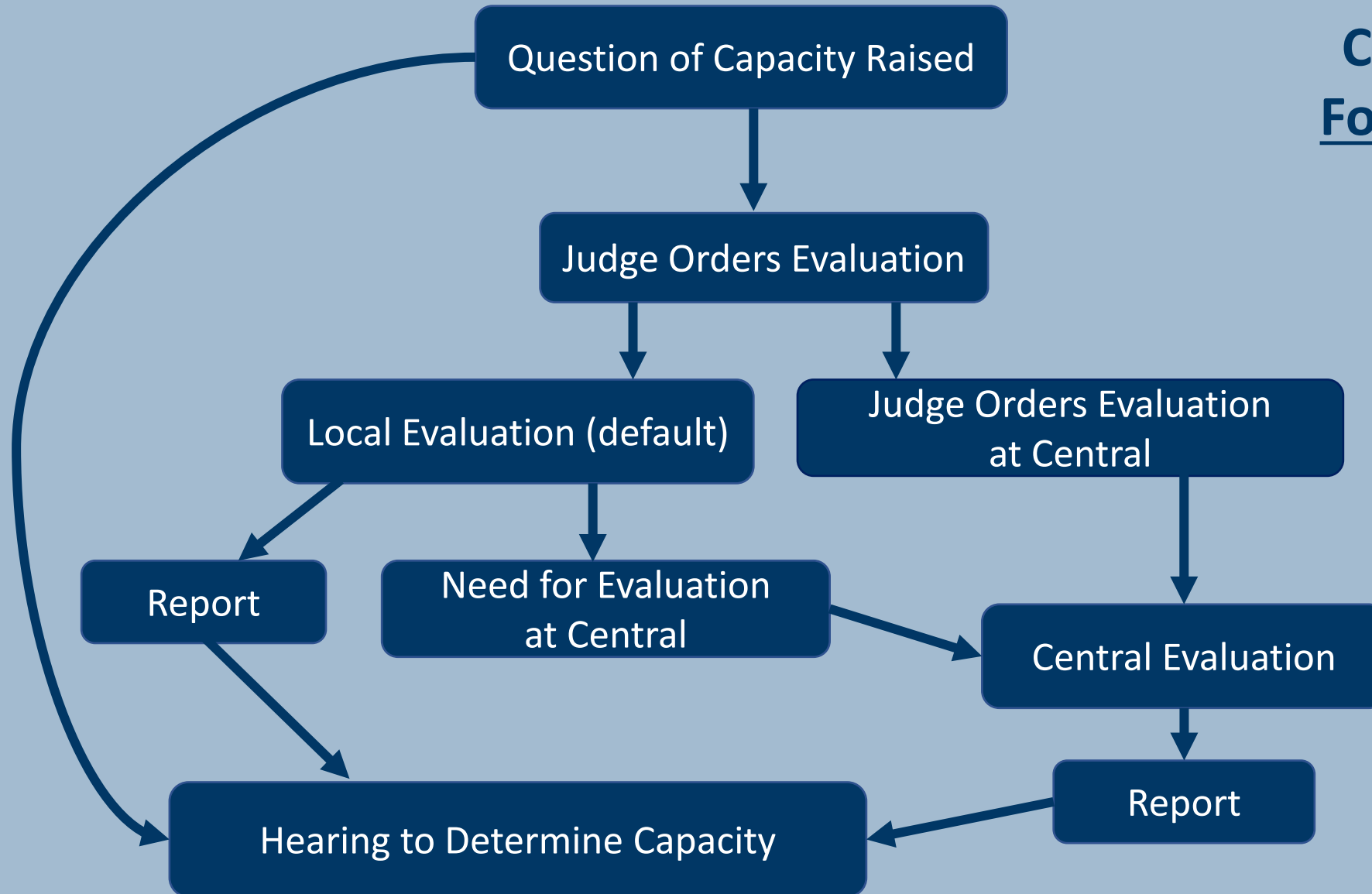
NCGS
15A-1002

- Local evaluation is still default.
- But a judge may make a finding that an evaluation at Central Regional Hospital is more appropriate than a local evaluation.

What if defendant is charged with felony ,
and evaluation is done at local facility?

- Local forensic evaluation is sufficient. Court may make decision based off local evaluation alone.
- Local evaluator may also decide that additional evaluation is necessary at a state facility. Local evaluator must notify court, and then court can order it.

Determining Capacity For Felony



After Evaluation

- If an evaluation is done, the results are then sent back to the judge, the prosecutor, and the defense.
- The results of an evaluation are not binding on the judge. A judge is the only person who can make the final determination whether a person is ITP or not.
- In practice, evaluations are often treated as dispositive and rarely challenged.

After Evaluation

- If defense, prosecution, and judge agree a defendant is capable to proceed, the judge makes that ruling and the case proceeds.
- If the defense, prosecution, and judge agree a defendant is ITP, then everything moves into a new analysis for the defendant and for the criminal charge.



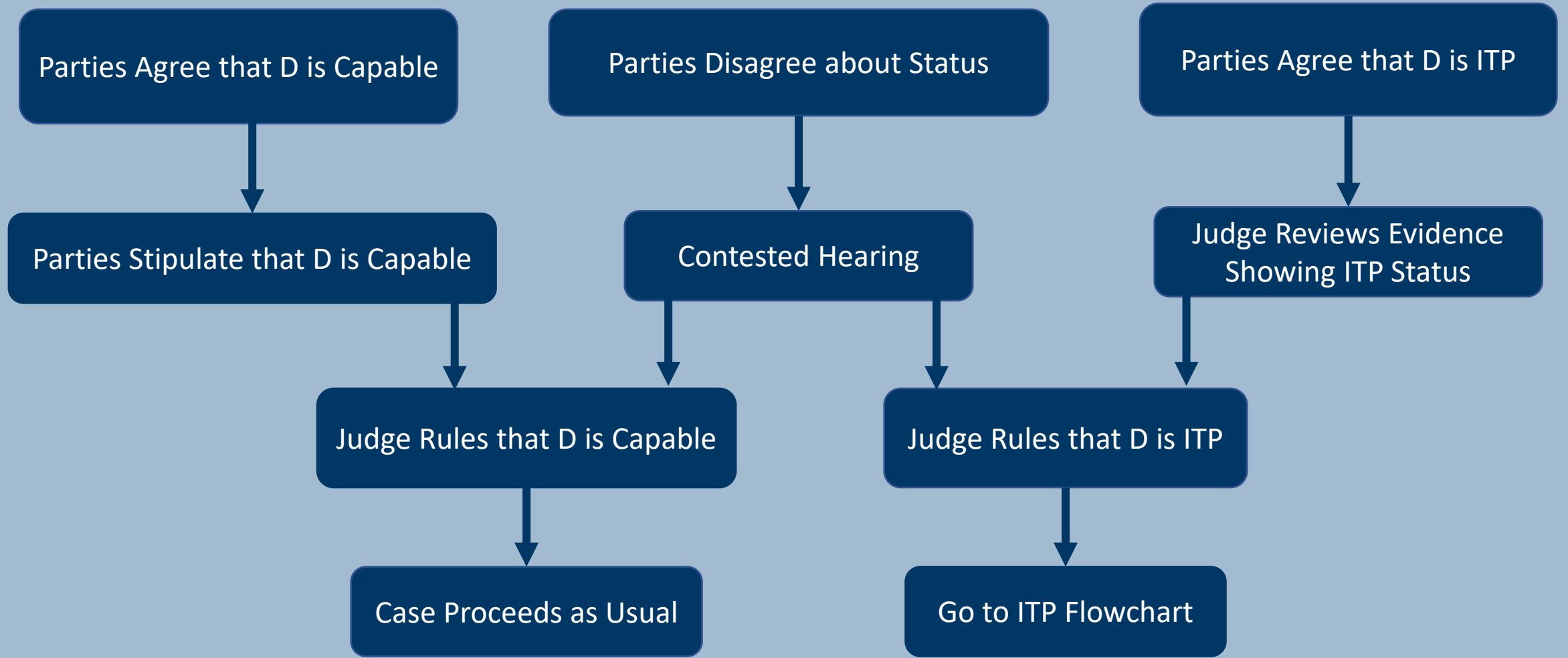
With or without an evaluation, if the defense and prosecution do not agree, the case moves into a contested capacity hearing.

The Contested ITP Hearing

Defendant has burden of proof to show he lacks capacity to proceed.

↳ But standard of proof is only preponderance of evidence.

Capacity Hearing




What happens after
a judge finds a
defendant is ITP?



**NCGS
15A-1003**

Judge shall determine whether there are reasonable grounds to believe that defendant meets criteria for involuntary commitment under Chapter 122C.




NCGS
122C-3(11)

Dangerous to Self

1. “Unable, without care, to exercise self-control, judgment, and discretion...to satisfy the individual’s need for nourishment, personal or medical care, shelter, or self-protection and safety. And a “reasonable probability...of suffering serious physical debilitation within the near future unless adequate treatment is given.”

“Behavior that is grossly irrational...actions that the individual is unable to control...behavior that is grossly inappropriate to the situation, or...evidence of severely impaired insight and judgment shall create prima facie inference that the individual is unable to care for himself or herself.”

2. Has attempted or threatened suicide.
3. Has or has attempted to mutilate himself and there is a reasonable probability of serious self-mutilation.



NCGS
122C-3(11)

Dangerous to Others

- Within relevant past, individual has:
 1. inflicted or attempted to inflict serious bodily harm on another; or
 2. acted in such a way as to create a substantial risk of serious bodily harm to another; or
 3. engaged in extreme destruction of property.
- And there is reasonable probably that this conduct will be repeated.

When three things come together:

Defendant is ITP

+

Defendant is danger to self/others

+

Defendant is charged with violent crime

=

**Defendant is committed to
state psychiatric hospital**

1+1+1=3

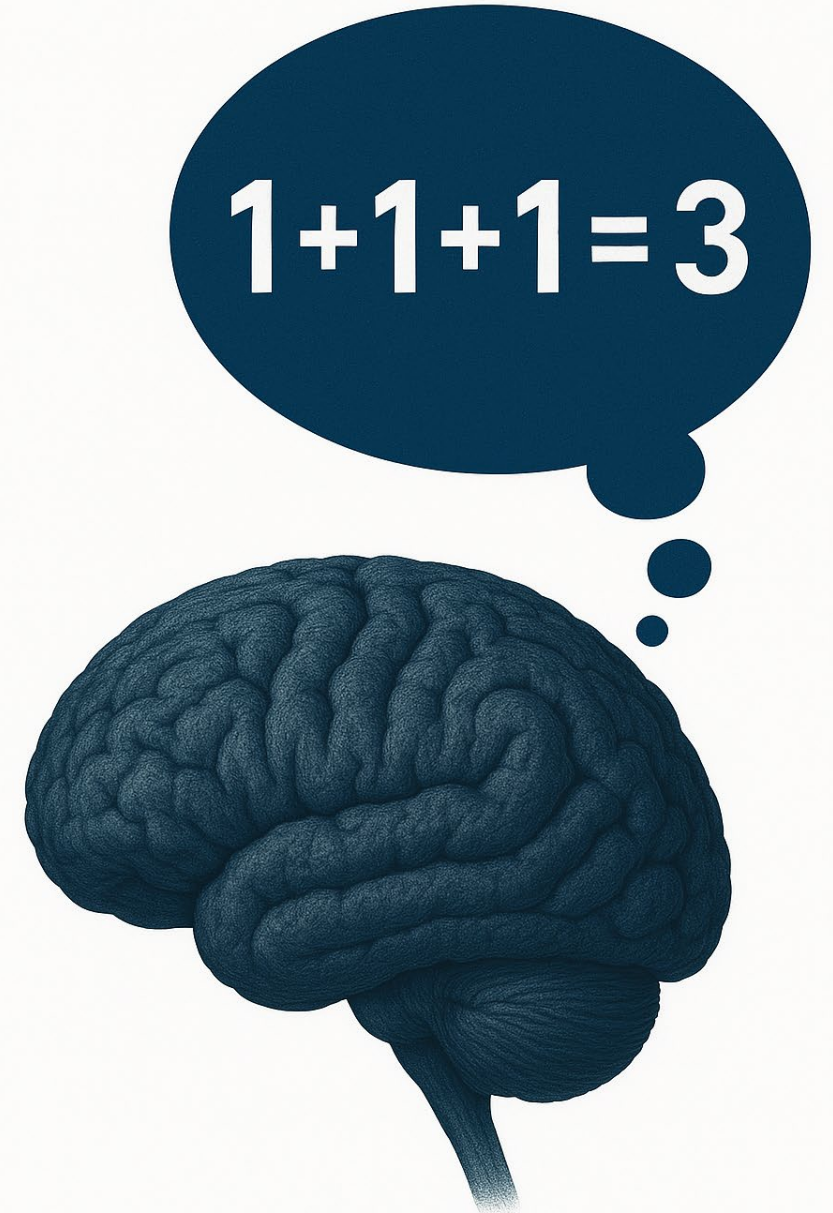


If a defendant is committed to state psychiatric hospital because:

- (1) ITP,
- (2) danger to self/others, and
- (3) violent crime...

...they stay committed until either:

- Capacity is restored and trial/plea can occur; or
- The charges are dismissed and the defendant is no longer a danger to self/others.



What if the defendant is ITP, and she is a danger to herself or others, but she isn't charged with a violent crime?



The judge orders a commitment examination.



Capacity Evaluation

Does the defendant understand what's going on in court?

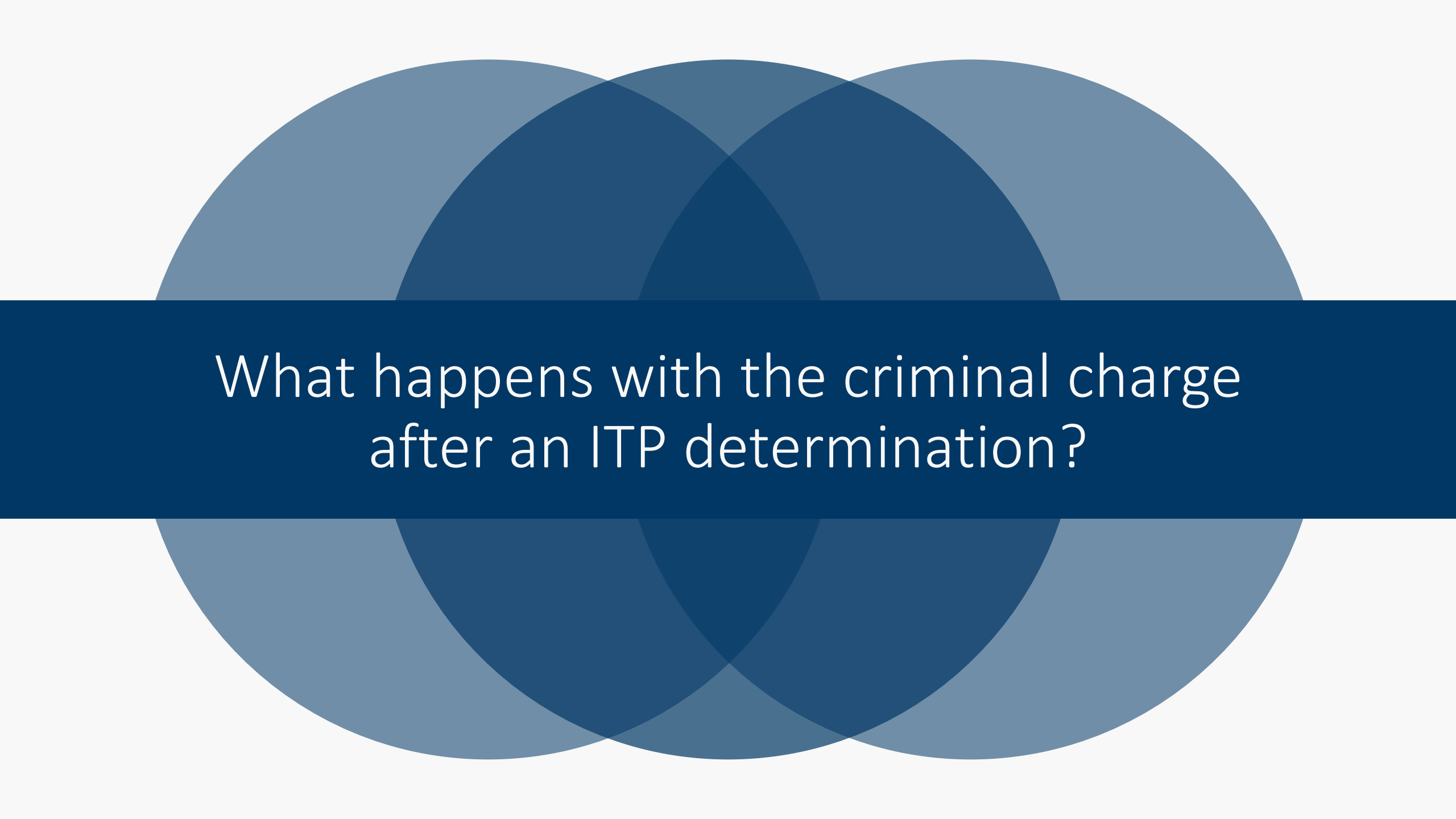
Commitment Examination

Is the defendant a danger to self or others?



After a commitment examination, an examiner may take one of three actions:

1. Determine that further inpatient treatment is necessary.
2. Determine that outpatient treatment is necessary.
3. Determine that no further treatment is necessary.

The image features a decorative background consisting of three overlapping semi-circles in shades of blue, positioned at the top and bottom. A solid dark blue horizontal bar spans the width of the image, containing the text.

What happens with the criminal charge
after an ITP determination?

What happens to the criminal charge?

The criminal charge remains pending.

It does not automatically go away just because someone has been determined to be ITP.



Upwards of 75% of people who are ITP can gain or regain capacity to proceed.



NCGS
15A-1008

When defendant is ITP, the court shall dismiss the charges upon the earliest of the following:

1. When it appears that the defendant will not gain capacity to proceed. (WITHOUT PREJUDICE)
2. When defendant has been incarcerated or committed longer than maximum term of imprisonment. (WITH PREJUDICE)
3. Five years after being determined to be ITP for misdemeanor, or ten years after being determined to be ITP for a felony. (WITHOUT PREJUDICE)



NCGS
15A-1003

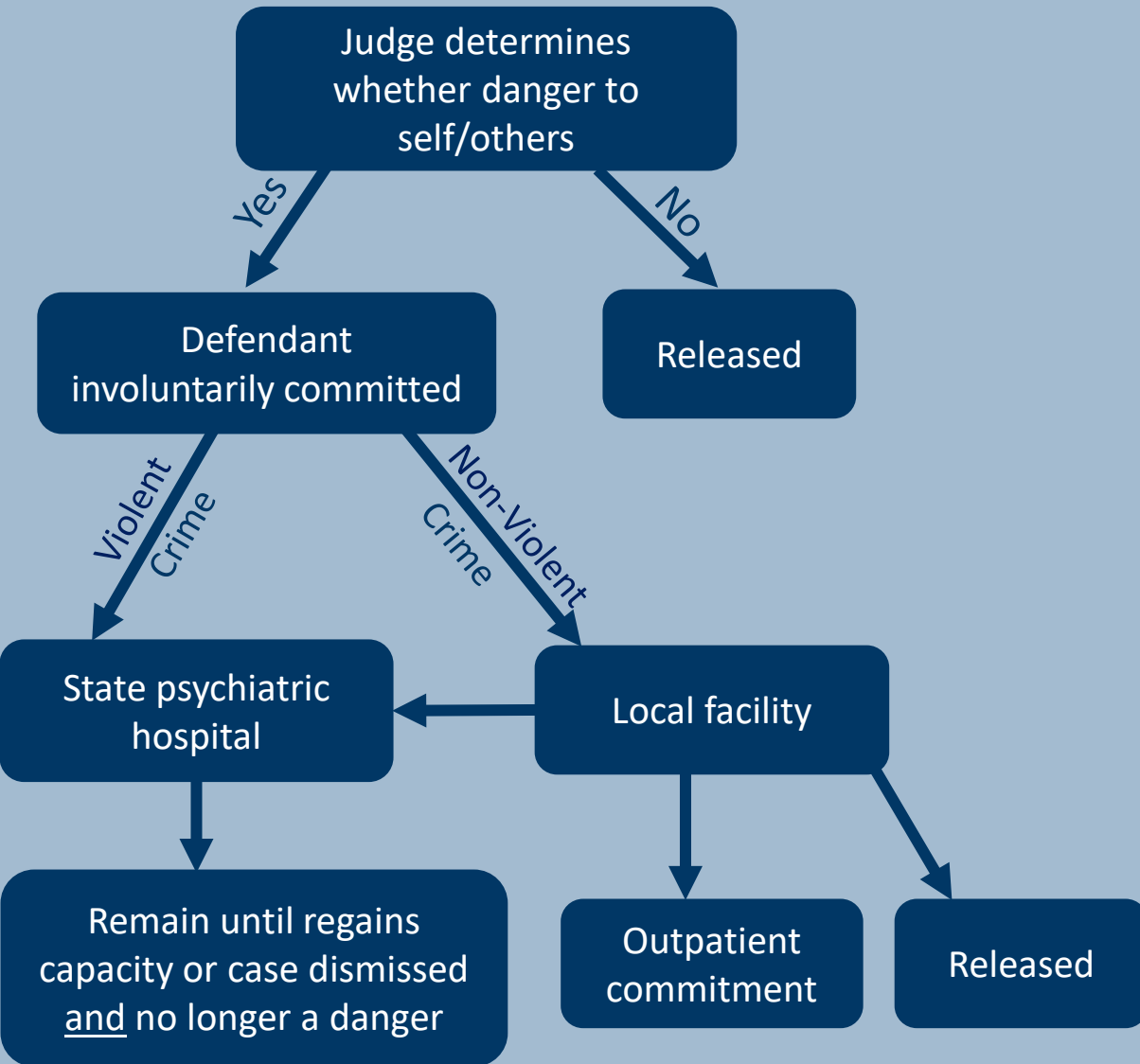
Judge shall determine whether there are reasonable grounds to believe that defendant meets criteria for involuntary commitment under Chapter 122C.

Iryna's Law Change

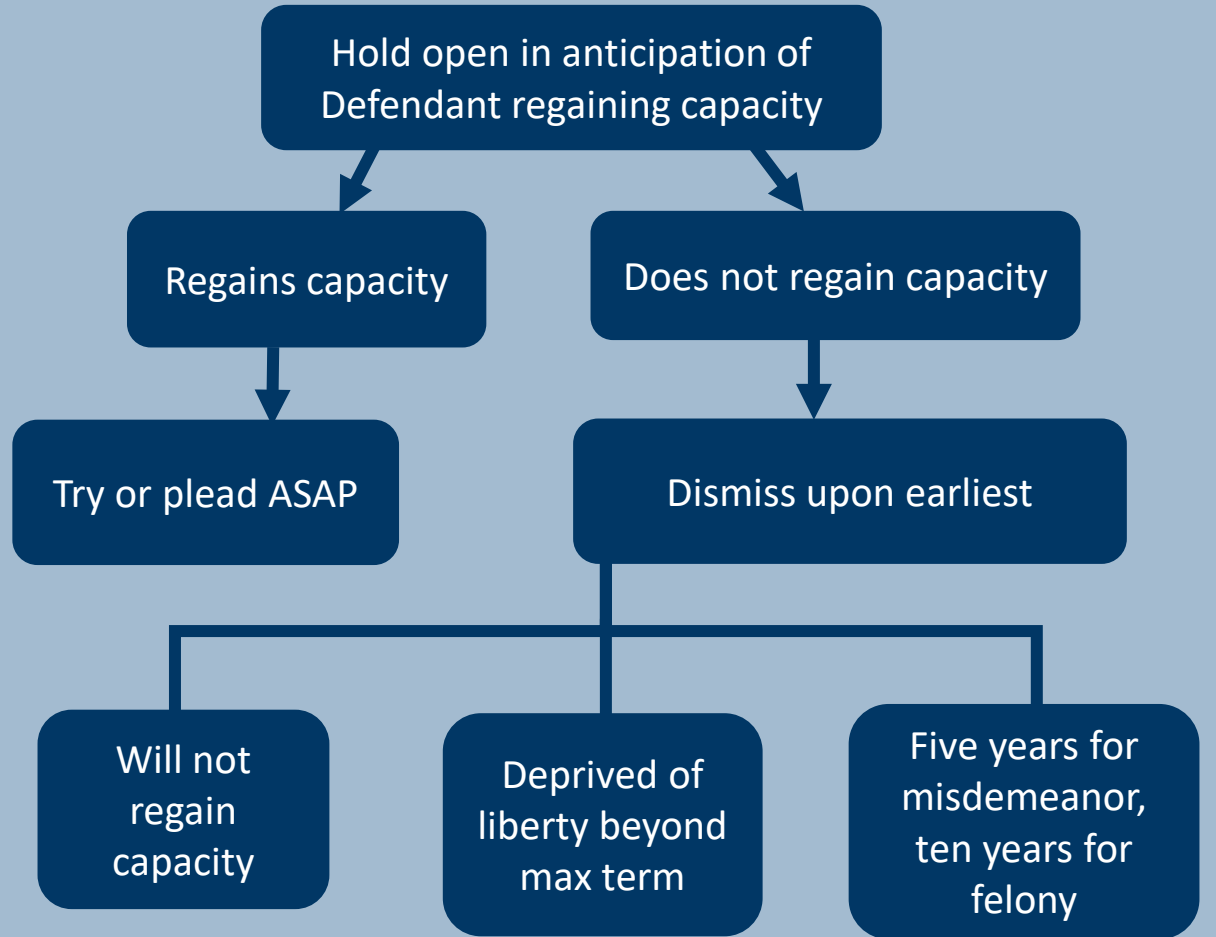
Prior to dismissal for any reason in 15A-1008, if defendant is not already subject to IVC, the judge shall make findings as to whether defendant is danger to self/others and should be IVCed.

Once Defendant Found ITP

What Happens to Defendant?



What Happens to Charge?



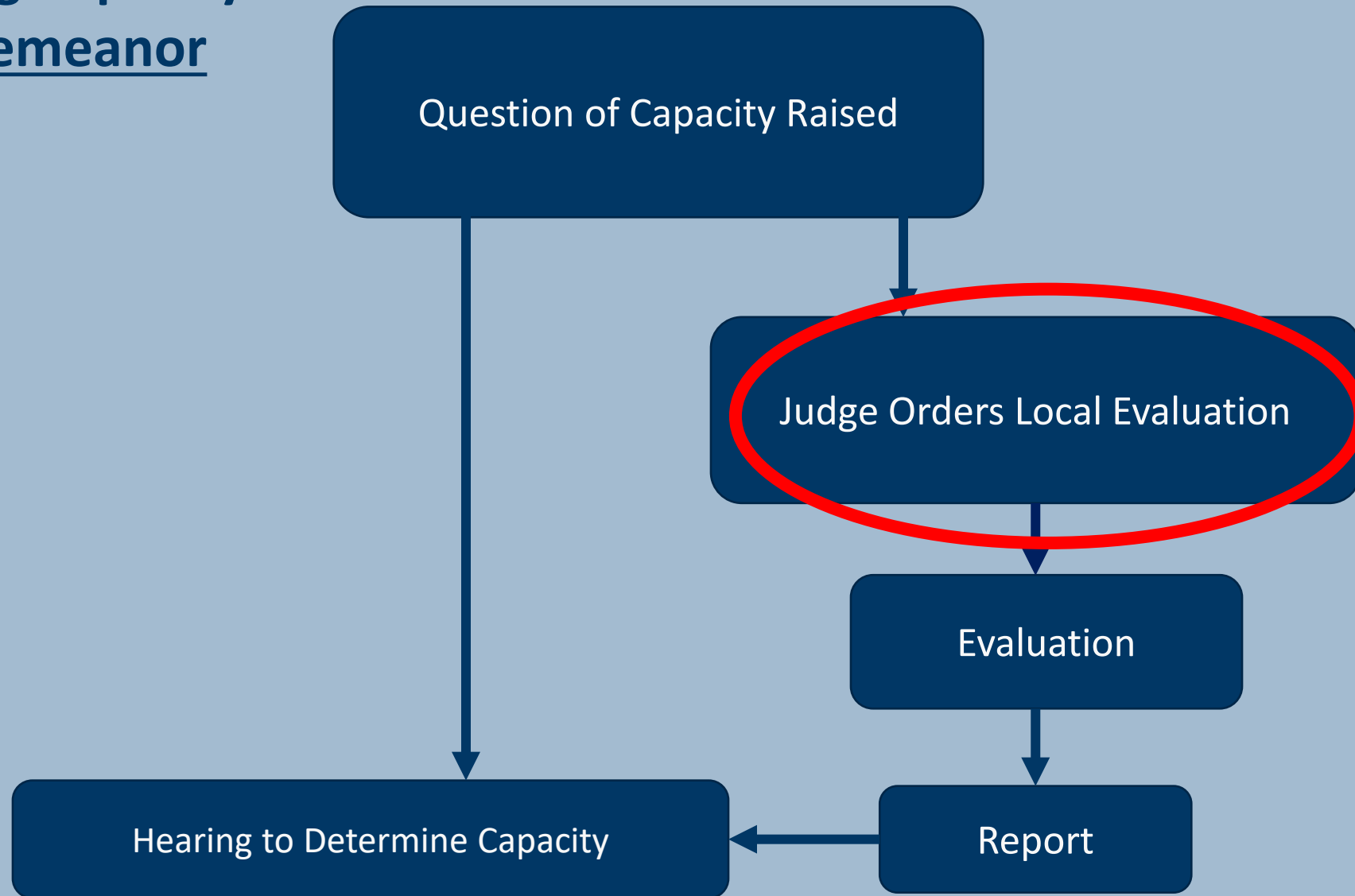
Areas of Concern



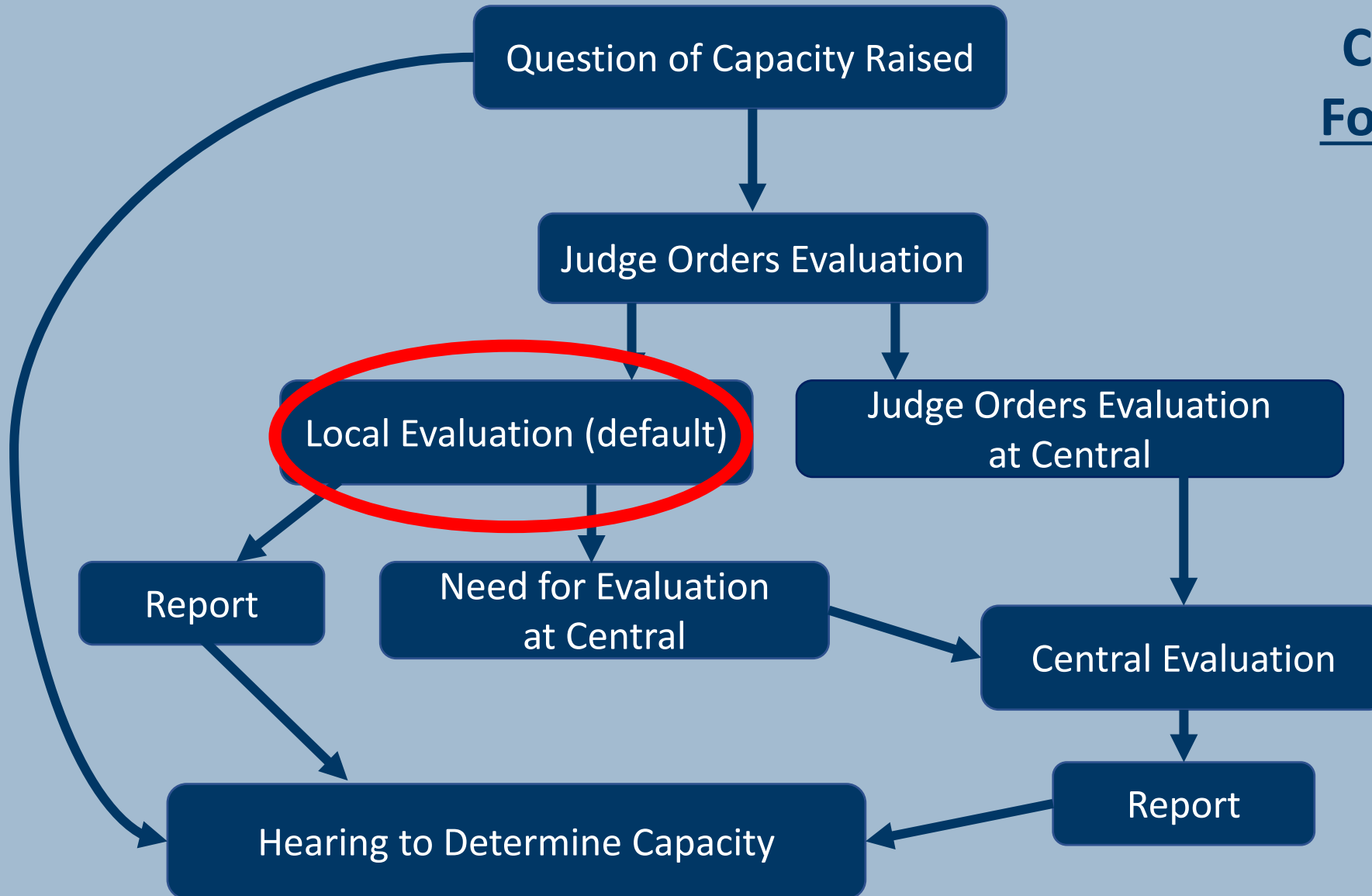
Concern #1

Local Evaluations Often Inadequate

Determining Capacity For Misdemeanor



Determining Capacity For Felony





Concern #1

Local Evaluations Often Inadequate



Concern #2

Once a defendant is found ITP, there are insufficient safeguards in place to prevent re-offending as well as inadequate means of attaining capacity.

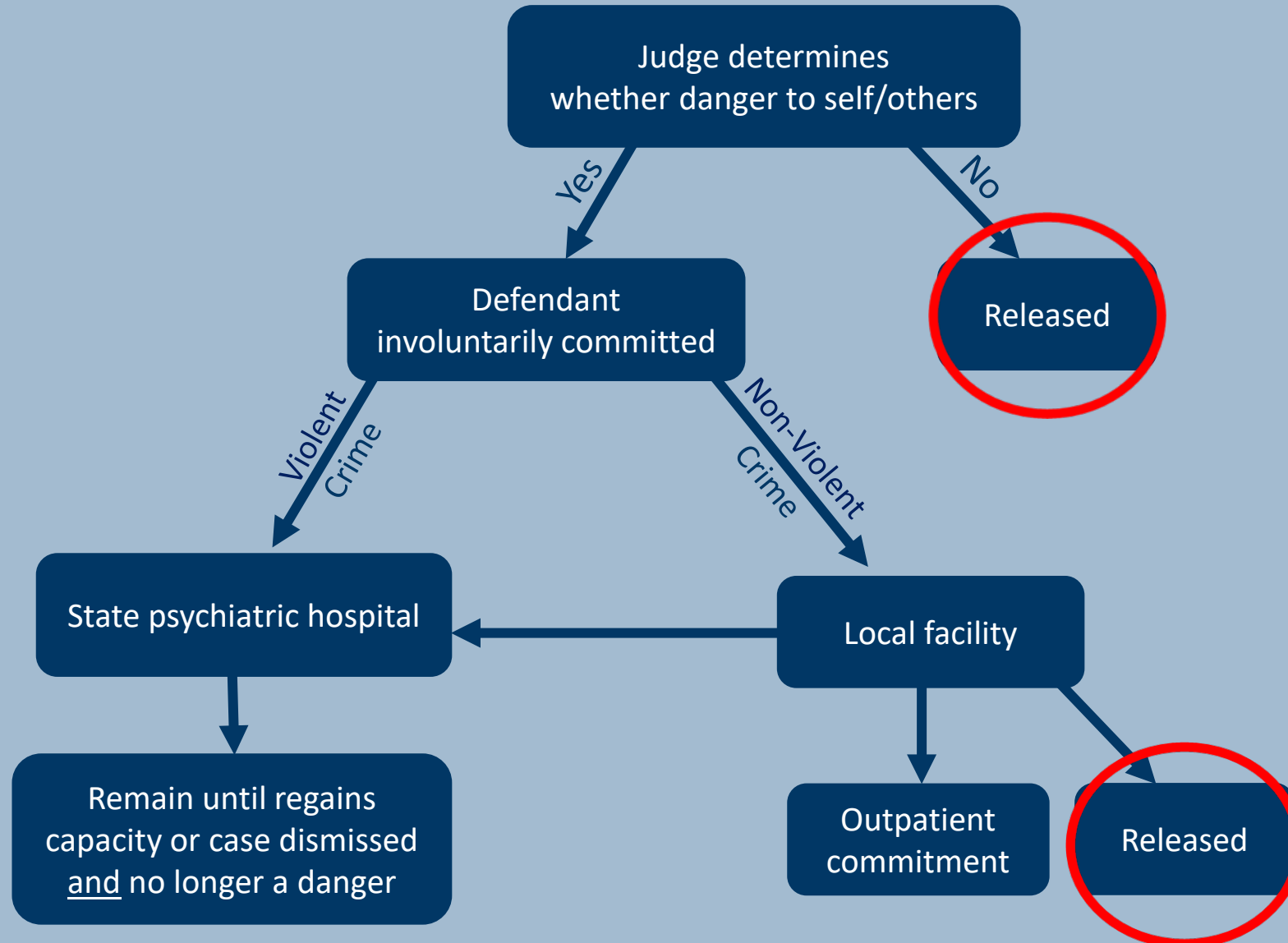


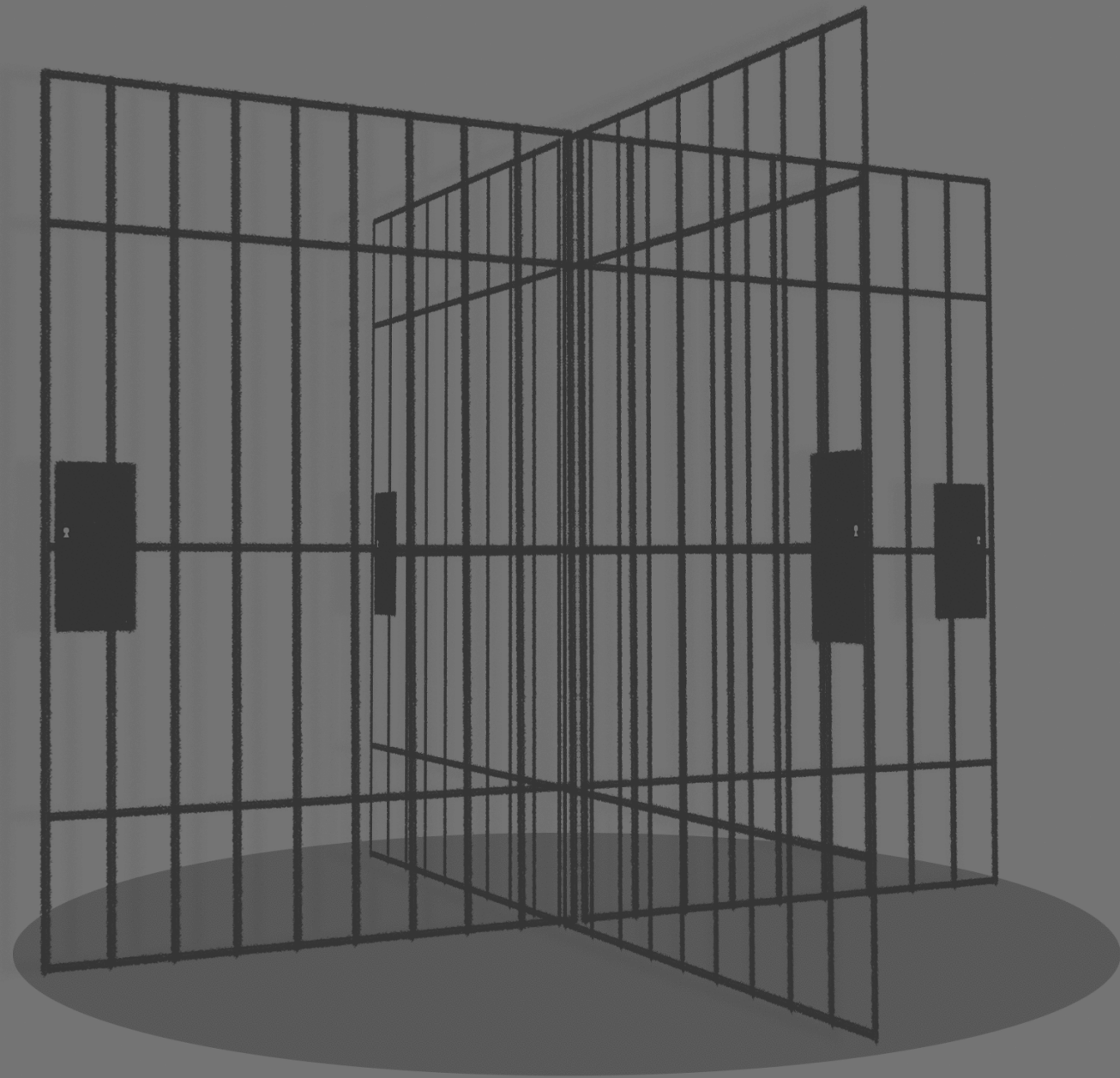
NCGS
15A-1003

Judge shall determine whether there are reasonable grounds to believe that defendant meets criteria for involuntary commitment under Chapter 122C.

Defendant Found ITP

What Happens to Defendant?

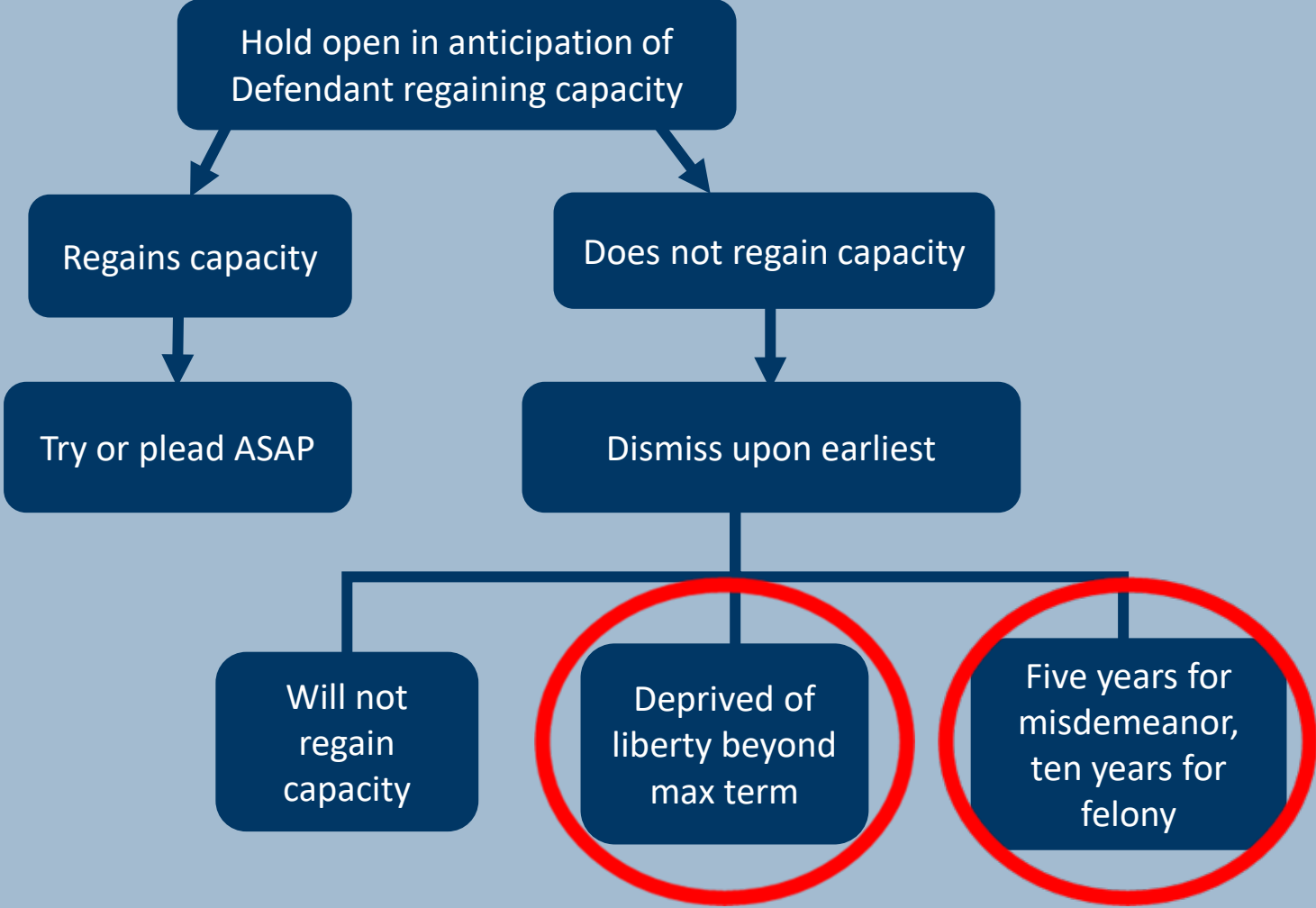






Defendant Found ITP

What Happens to Charge?





Concern #3

ITP + Nonrestorable

=

Prosecutors lose all agency in case

Defendant Found ITP

What Happens to Defendant?

