### 2011-2012

# INCAPACITY TO PROCEED SUBCOMMITTEE

**MINUTES** 

#### **Incapacity to Proceed Committee (LRC)(2011)**

#### **Non-Standing Committee**

#### **Details**

• Authority: LRC 2011

#### **Members**

#### Chair

Rep. Shirley B. Randlema	an (Chair)	House Appointment
<b>Legislative Members</b>		
Rep. Justin P. Burr		House Appointment

Rep. John Faircloth

Rep. Pat B. Hurley

Rep. Frank McGuirt

House Appointment

House Appointment

## Legislative Research Commission Subcommittee on Incapacity to Proceed

#### 2011-12 Interim

#### **Committee Charge**

The Legislative Research Commission may study the adequacy of the involuntary commitment process for a criminal defendant who lacks the capacity to proceed to trial. In its study, the Commission may consider the impact of current law on the limited resources of local law enforcement, hospitals, mental health facilities, and the State's court system while balancing the rights of the accused, victims, and the safety and the general welfare of the public. The Commission may also consider options for determining whether a defendant is likely to attain the capacity to proceed to trial in the foreseeable future and at what point in the process that determination should be made. The Commission shall evaluate the statutory option of taking dismissals in these types of cases for defendants who are charged with nonviolent crimes and for defendants who are charged with violent crimes, how often that option is used, and at what point and under what circumstances that option should be used. In addition, the Commission may consider all of the following: issues related to transportation, including frequency, distance, and cost associated with the required psychiatric evaluations; duration of involuntary commitment for defendants found incapable of proceeding to trial pursuant to Article 56 of Chapter 15A of the General Statutes and involuntarily committed pursuant to Part 7 of Article 5 of Chapter 122C of the General Statutes; and any other issues the Commission considers relevant to this topic.



#### Office of the Speaker North Carolina House of Representatives Raleigh, North Carolina 27601-1096

THOM TILLIS SPEAKER

September 12, 2011

Representative Tim Moore
Chairman
Legislative Research Commission
North Carolina House of Representatives
16 W. Jones Street, Room 1326
Raleigh, NC 27601-1096

#### Dear Representative Moore:

As you prepare your agenda for the Legislative Research Commission (the "Commission"), pursuant to G.S. 120-30.17, I hereby authorize the Commission to appoint subcommittees to study the following matters during the interim. House appointees to each study committee are also identified. Please restrict each study committee to a maximum of four meetings unless additional meetings are pre-approved by my office.

#### **Studies Approved in Conjunction with the Senate:**

- North Carolina Alcoholic Beverage Control System Study the following aspects of the current State and local alcoholic beverage control (ABC) in North Carolina:
  - (1) Whether the involvement in the distribution and sale of spirituous liquor is a core government function of State and local government.
  - (2) The privatization and divestiture of the ABC system, including potential recurring and nonrecurring revenue from the divestiture of the ABC system's current assets.

- (1) Financial stability of the current independent systems on a historic basis and the anticipated financial stability of a combined system.
- (2) Cost-benefit analysis of a combined system, including a review of assets and liabilities; personnel needs; equipment and infrastructure replacement schedules; facilities leased and owned; and fee schedules.
- (3) Debt obligation.
- (4) Taxpayer investments in the systems.
- (5) Audit of current financials.
- (6) Comparative analysis of the current system to existing public and private systems.
- (7) Conservation and water efficiency practices.
- (8) Best management practices.
- (9) The disposition of property in Article 12 of Chapter 160A of the General Statutes as it relates to a conveyance of a water system.
- (10) The transfer of permits when a water system is conveyed.
- (11) Any local acts applicable to the city or metropolitan sewerage district.
- .(12) Other items the Commission deems relevant to the study.

Chair: Moffitt

Members: McGrady, Brawley, Murry, Brisson

3. Make Manufacture While Using Stolen IT an Unfair Act

Chair: T. Moore

Members: Starnes, Mills, Avila, Pridgen

4. Orderly and Expeditious Removal by Landlord of Personal Property of Deceased

The Committee may recommend changes to the General Statutes to provide for the
orderly and expeditious removal by a landlord of the personal property of a decease
tenant where the heirs are not readily identifiable or available to take possession of that
personal property.

**Chair: Howard** 

Members: T. Moore, Blust, Hastings, Stevens, Hilton, Randleman

#### 5. Incapacity to Proceed

The Legislative Research Commission may study the adequacy of the involuntary commitment process for a criminal defendant who lacks the capacity to proceed to trial. In its study, the Commission may consider the impact of current law on the limited resources of local law enforcement, hospitals, mental health facilities, and the State's court system while balancing the rights of the accused, victims, and the safety and the general welfare of the public. The Commission may also consider options for

determining whether a defendant is likely to attain the capacity to proceed to trial in the foreseeable future and at what point in the process that determination should be made. The Commission shall evaluate the statutory option of taking dismissals in these types of cases for defendants who are charged with nonviolent crimes and for defendants who are charged with violent crimes, how often that option is used, and at what point and under what circumstances that option should be used. In addition, the Commission may consider all of the following: issues related to transportation, including the frequency, distance, and cost associated with the required psychiatric evaluations; duration of involuntary commitment for defendants found incapable of proceeding to trial pursuant to Article 56 of Chapter 15A of the General Statutes and involuntarily committed pursuant to Part 7 of Article 5 of Chapter 122C of the General Statutes; and any other issues the Commission considers relevant to this topic.

Chair: Randleman

Members: Burr, Hurley, McGuirt, Faircloth

#### 6. Life Cycle Cost Analysis

The Commission may study the implementation of revised policies on life cycle cost analysis including material cost indexing, open bidding for alternate pavement designs for all TIP projects that exceed \$500,000 in pavement costs, and the 30 year design periods and 45 year analysis periods based upon actual historic schedules and costs.

**Chair: Torbett** 

Members: Murry, Killian, Hilton, Iler, Mills

#### 7. Feasibility of Requiring Certain Reports to Be Filed Electronically

The Commission may study the feasibility and applicability of requiring electronic filing of all reports required to be filed with the State Board of Elections under G.S. 163-278.9, regardless of the amount.

Chair: Lewis

Members: Randleman, Blust, Jones, Ross

#### 8. Criminal Record Expunctions

The Legislative Research Commission may study whether current law strikes an appropriate balance between an employer's need for access to accurate criminal history information about potential employees and the need for a person who committed a relatively minor offense in the distant past to obtain employment in spite of the person's criminal history. If the Legislative Research Commission finds that it may be possible to achieve a better balance between these interests, then the Legislative Research Commission may further consider what type of expunction procedure may be developed and implemented that addresses the interests and concerns of employers,



#### NORTH CAROLINA GENERAL ASSEMBLY

Raleigh, North Carolina 27601

#### 10-19-2011

#### **MEMORANDUM**

TO:	Members of the LRC Subcommittee on Incapacity to Proceed
FROM:	Representative Shirley B. Randleman, Chair
SUBJECT:	Meeting Notice

DAY	DATE	TIME	ROOM
Wednesday	11-09-2011	2:00pm	415 LOB

Parking for non-legislative members of the committee/commission is available in the visitor parking deck #75 located on Salisbury Street across from the Legislative Office Building. Parking is also available in the parking lot across Jones Street from the State Library/Archives. You can view a map of downtown by visiting <a href="http://www.ncleg.net/graphics/downtownmap.pdf">http://www.ncleg.net/graphics/downtownmap.pdf</a>.

If you are unable to attend or have any questions concerning this meeting, please contact James White (Rep. Randleman) at (919) 733-5935.

cc:	Committee Record	_X_
	<b>Interested Parties</b>	_X_

#### **ATTENDANCE**

#### **Incapacity to Proceed Study Committee 2011-12**

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DATES											
. 11-09-2011											
Rep. Shirley Randleman	<b>/</b>										
Rep. Justin Burr	<u></u>										
Rep. John Faircloth	\ \ \	;				7:					
Rep. Pat Hurley	\ <u>\</u>				,						
Rep. Frank McGuirt	<b>/</b>										
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#### Members' In-State Reimbursement Form

Form:	<b>PR008</b>
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Budget to Charge\_

Ext.# 3-5935

Administrative Division Financial Services Section

Committee Assistant Name: James White

This form is used to request for in-state reimbursement for subsistence and travel for Committee, Commission or Other In-State Meetings/Legislative Business by members.

Rev: 09/2010
Financial Services Use:

LRC Subcommittee on Incapacity to Proceed (Complete Name of Committee or Commission or Description of Meeting/Business) Location of Meeting (City): Raleigh, NC **Date(s) of Meeting:** 11-09-2011 Rep. Shirley Randleman Member: 2 Total Number of day's subsistence claimed (This line MUST be completed to be reimbursed) Yes 🖂 No 🗌 Arrived the day prior to meeting day (Claim one day for each meeting day you attended. If spending the night prior to the first meeting day, you are entitled to an extra day.) On file Car Mileage (Fill out this line if mileage is different than what is certified on file) **Number of Round Trips** 0 [Must be approved by Chairperson, Senate President Pro Tempore or (Approval Signature) House Speaker] Names of other official legislative or state government meetings attended during this visit: Session, Monday 11-07-2011 Appropriations JPS Staff and The AOC meeting, Tuesday 11-08-2011 Number of day's subsistence claimed for other meeting(s) Car Mileage claimed for other meeting Yes 🖂



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Rev: 09/2010

Financial Services Use:

Budget to Charge

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Member:	Rep. Pat Hurley				
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Committee Assistant N	Jame: James White		Fy	kt.# 3-5935	



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Form: PR008

Administrative Division Financial Services Section

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Rev: 09/2010 Financial Services Use: -Budget to Charge\_

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Committee Assistant 1	Name: James White		Ext.# 3-5935



#### Members' In-State Reimbursement Form

Form: PR008

Administrative Division Financial Services Section

Committee Assistant Name: James White

This form is used to request for in-state reimbursement for subsistence and travel for Committee, Commission or Other In-State Meetings/Legislative Business by members.

Rev: 09/2010
Financial Services Use:

Budget to Charge

Ext.# 3-5935

	LRC Subcommittee on Incapacity to Proceed
(Complete Name of	of Committee or Commission or Description of Meeting/Business
Location of Meeting	(City): Raleigh, NC
Date(s) of Meeting:	11-09-2011
Member:	Rep. Justin Burr
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Car Mileage claimed	for other meeting - Session Yes V No



#### Members' In-State Reimbursement Form

Form:	PR00
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**Budget to Charge** 

Ext.# 3-5935

Administrative Division Financial Services Section

Committee Assistant Name: James White

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Rev: 09/2010
Financial Services Use:

	LRC Subcommittee o	n Incapacity t	o Proceed	
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#### Committee Sergeants at Arms

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DATE:	11-9-2011 Room: 415		
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5. Name: _			

#### **VISITOR REGISTRATION SHEET**

LRC Subcommitte on Incapacity to Proceed

11-09-2011

Name of Committee

Date

#### VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
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Jon Jorrary	DMU/DD/SAS (DUUS)
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TROY PAGE	NC Ape
John Rubin	unc Sog
Mark Boths	une soc
Jayne Shale	Liberty Healthrage
Nancy Warren	MC Div. A Raing & Adult Sucs. (DHHS)
Peter Strickland	NC Conference of District Atterneus
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Sarah Preston	ACIV-NC

#### **VISITOR REGISTRATION SHEET**

LRC	Subcomm	itte on	Incapacity	to Proceed
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11-09-2011

Name of Committee

Date`

#### VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

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	Robin Huffman	NC Psychiatric Association		
	Rastbelan	DHFS.		
	JEAN SANDATRE	WIDA		
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#### **VISITOR REGISTRATION SHEET**

LRC Subcommitte on Incapacity to Proceed

11-09-2011

Name of Committee

Date

#### VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS	
Laura Sheras	Central Regional Hospilal	
Porser Ling	DMH/DD/888	
NANCY LANCY PhD.	NCPA	
Laurawhite	DHHS/DSOHF	
Luckey WELSH	/ // ·	
Michael WANN	DHH	
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#### General Assembly of North Carolina

## Legislative Research Commission Committee on Incapacity to Proceed

State Legislative Building Raleigh, Porth Carolina



#### AGENDA

Wednesday, November 9, 2011 – 2:00 p.m. Legislative Office Building, Room 415 SUSAN SITZE
COMMITTEE COUNSEL
545 LEGISLATIVE OFFICE BUILDING
300 NORTH SALISBURY STREET
RALEIGH, NORTH CAROLINA 27603
(919) 733-2578
FAX: (919) 715-5460

HAL PELL COMMITTEE COUNSEL

JAN PAUL COMMITTEE COUNSEL

SUSAN BARHAM COMMITTEE STAFF

JAMES WHITE COMMITTEE CLERK 300 NORTH SALISBURY STREET ROOM 531 RALEIGH, NC 27601 (919) 715-3021

I. Call to order

CHAIR

MEMBERS REP. JUSTIN P. BURR REP. JOHN FAIRCLOTH

REP. PAT B. HURLEY

REP. FRANK McGUIRT

REP. SHIRLEY B. RANDLEMAN

- II. Introductory remarks by Chair
- III. Committee Charge and Committee Counsel Comments
- IV. Staff Overview
- V. Committee discussion and announcements
- VI. Adjourn

Next meeting: To be determined

#### ADDITIONAL INFORMATION:

Persons having questions about the Committee meeting or other matters related to the Committee may contact Susan Sitze, Hal Pell, or Jan Paul, Committee Co-Counsel, or other Committee staff at (919) 733-2578, or may visit the Committee's website at:

http://www.ncleg.net/gascripts/Committees/Committees.asp?sAction=ViewCommittee&sAction
Details=Non-Standing 6553

#### Legislative Research Commission Subcommittee on Incapacity to Proceed Meeting Minutes – 11-09-2011

A meeting of the Legislative Research Commission Subcommittee on Incapacity to Proceed was called to order by Representative Shirley Randleman, Chairman, at 2:00 pm on November 9, 2011, in room 415 of the Legislative Office Building.

Members present included Chairman Representative Shirley Randleman, Representative Justin Burr, Representative John Faircloth, Representative Pat Hurley, and Representative Frank McGuirt.

Staff present included NCGA Staff Attorneys Jan Paul and Hal Pell, Research Assistant Susan Barham, and Committee Clerk James White.

Chair Randleman thanked Members for their attendance and the public audience for joining as well. She recognized and thanked the Sergeant- at- Arms Reggie Sills and Martha Parish. The Chair then noted the other people sitting around the table with the Members. These stakeholders from various agencies and organizations were invited to sit at the table and were identified with a table tent. She introduced the Committee Clerk James White, Staff Attorney Susan Sitze (who is out on medical leave), Staff Attorneys Jan Paul and Hal Pell, and Research Assistant Susan Barham. The Members were then asked to introduce themselves, followed by brief introduction of the invitees seated at the table: John Rubin – University of North Carolina School of Government, Brad Greenway – District Attorney for Dist. 29A, Andrew Cagle – North Carolina Sheriffs Association, Mildred Spearman – The Administrative Office of the Courts, Mark Hazelrigg – Director of Outpatient Evaluations at Central Regional Hospital, and Richard Slipsky – Special Deputy Attorney General with North Carolina Attorney General's Office. The Chair made note that there may be other individuals or organizations that need to be invited to and included in the meetings and the Chair would make certain that invitations would be extended to those individuals.

Chairman Randleman introduced herself and spoke on her background to the subject. Serving almost 35 years in the court system, she noted that she has observed certain situations in regard to the incapacity to proceed. Early on, she realized and recognized that there could be improvements made to the process. At the beginning of 2011-12 General Assembly, Representative Randleman started working with Staff and they began discussions on the current Incapacity to Proceed laws, and the actual processes that are conducted in compliance with those laws. At that point, Staff reached out to many stakeholders, and the issue was discussed over a period of 6-8 weeks; however, the Chair and Staff could not come up with any possible solutions to make the process more efficient and effective. After running into no possible solution, the legislation she began work on during the 2011-11 Session was turned into a study. The Chair noted that she hopes the study will result in improvements in the process. The Chair noted that with as many stakeholders involved, some methods must emerge that will make the processe easier for agencies, for counties, and for individuals that are tied up in the revolving door processes. The Chair spoke on how the meetings were to be open and everyone should have the opportunity to speak, and participants should be allowed to speak freely because all opinions are valued.

Chair Randleman then recognized Hal Pell, NGCA Staff Attorney, to review the Committee Charge and other pertinent topics on the agenda.

Mr. Pell thanked the Chair for recognition. He noted that the Legislative Research Commission (LRC) and the proceedings of the Commission are established by Statute. Pursuant to the Statute, certain studies

are authorized by the Chairman of the LRC, Representative Tim Moore, in an authorizing letter that includes the Incapacity to Proceed Committee Charge. Mr. Pell went on to note that the authorizing letter has two provisions of specific importance. First, the subcommittee is authorized for the interim; thus, any reports or recommendations would be given to the Short Session and are eligible at that time. Second, a restriction of four meetings for LRC Subcommittee unless prior approval is given otherwise is noted in the authorizing letter for the LRC Chairman (see attachment #1)

Mr. Pell also mentioned the 2011-2012 Incapacity to Proceed Subcommittee Budget Estimate, noting that these numbers were estimates and not requirements for funding. The document is a guideline with a total expense of \$5,520. Mr. Pell mentioned that as with approval for additional meetings, if more funds were needed to execute the business of the committee, approval could be sought through the LRC Chairman (see attachment #2).

Chair Randleman then asked the Subcommittee if there was a motion to adopt the subcommittee budget. With Representative Hurley making the motion to approve the budget, and hearing a second by Representative John Faircloth, the Chair called for a vote. With all Members voting aye, the subcommittee's budget was approved.

Mr. Pell then went on to speak on the Committee Charge. He explained that The Legislative Research Commission may study the adequacy of the involuntary commitment process for a criminal defendant who lacks the capacity to proceed to trial. In its study, the Commission may consider the impact of current law on the limited resources of local law enforcement, hospitals, mental health facilities, and the State's court system while balancing the rights of the accused, victims, and the safety and the general welfare of the public. The Commission may also consider options for determining whether a defendant is likely to attain the capacity to proceed to trial in the foreseeable future and at what point in the process that determination should be made. The Commission shall evaluate the statutory option of taking dismissals in these types of cases for defendants who are charged with nonviolent crimes and for defendants who are charged with violent crimes, how often that option is used, and at what point and under what circumstances that option should be used. In addition, the Commission may consider all of the following: issues related to transportation, including the frequency, distance, and cost associated with the required psychiatric evaluations; duration of involuntary commitment for defendants found incapable of proceeding to trial pursuant to Article 56 of Chapter 15A of the General Statutes and involuntarily committed pursuant to Part 7 of Article 5 of Chapter 122C of the General Statutes; and any other issues the Commission considers relevant to this topic (see attachment #3)

Mr. Pell noted that there are no endorsements on any of the directives on the charge, but instead these are areas that the committee may want to look at.

Mr. Pell additionally described the genesis of the current procedures as U.S. Supreme Court Case Jackson v. Indiana from 1972, where the petitioner was committed under a state statute related to pretrial commitment of incompetent criminal defendant. In that case, the commitment procedure was more lenient or easier to commit a criminal defendant, as compared to regular civil commitments, but it also had a more stringent standard for releasing those who are not charged with a crime. The court was looking at the issue of if the petitioner was denied equal protection of the laws and if the indefinite commitment of the petitioner was a denial of due process. What the court said in their holding, if a person was charged by the state for a criminal offense, and is committed solely on account on the incapacity to proceed to trial, they cannot be held more than a reasonable period of time necessary to determine whether there is a substantial probability that he or she will attain that capacity in the

foreseeable future. If that is not the case, then the state must institute the usual civil commitment preceding that would be required to commit any person or they must release the defendant. That was what the court ruled, and, if it was determined that the defendant would soon be able to stand trial, his continued commitment must be justified by progress towards that goal. And the court did not set a time limit as to a reasonable period without a commitment hearing.

Chair Randleman thanked Mr. Pell and asked if there were any questions from Members for him. With no questions being asked, the Chair recognized Janice Paul, Staff attorney with North Carolina General Assembly.

Mrs. Paul thanked the Chair, Members, and those additional individuals in the audience who were invited to the meeting: Mike Watson – Department of Human Services (DHHS), Luckey Welsh – Director of the Division of State Operated Health Care Facilities of the DHHS, and Mark Botts - UNC School of Government. Mrs. Paul wanted to thank Mr. Rubin and noted that the brain trust for involuntary commitment and Incapacity to proceed law may actually be at the School of Government. Mrs. Paul also extended appreciation to Mr. Rubin for the flow chart he created as it is a great resource that illustrates many of the problems and concerns within the incapacity to proceed process.

Mrs. Paul gave a Power Point presentation, which was a background and overview to the North Carolina laws in relation to the subject (see attachment #4).

Chair Randleman recognized Hal Pell for some remarks on the topic.

Mr. Pell again raised the point that there was concern over defendants serving more time in confinement then if they had been sentenced for the crime. Provisions within G.S. 15A-1008 do stipulate dismissal of charges, but that is discretionary. In other words, the court may dismiss the charges under the three referenced circumstances.

Chair Randleman asked the Members of the committee if they had any questions for Mr. Pell or Mrs. Paul. Hearing no questions, the Chair moved on to describe a situation that occurred within her community, an event prompting her to ask for a study. Chair Randleman recalls an individual who lived in Wilkes County with a questionable mental status. The individual's wife was visiting another person in a nursing home. They were estranged and he went to her nursing home and shot her. She did not die from the attack but was injured. He was charged with assault with a deadly weapon inflicting serious injury not resulting in death. The man was incarcerated and his capacity to proceed was questioned. At that point, he was sent to Dorothea Dix Mental Hospital. After evaluation, he was found incapable to proceed and he was sent back to the county and then back before the court. Following all of that, a 122C proceeding was initiated and he was taken to the state hospital. They medicated him, sent him back to the county jail. Another hearing was held and he was sent back to Dorothea Dix, was revaluated, and again found incapable to proceed—was sent back to county—back to Broughton. This revolving process was continued for 5 years, until the DA finally dropped the charges. The Chair recalled that the district attorney did not what to drop the charges because of the public perceptions, given his actions and the safety of the public, when someone who has committed those types of offenses is released back into society. In seeing that one situation, and over the years seeing other situations, the Chair noted understanding what a burden this places on the counties. Transportation costs and man hours can be hefty when you take someone from a rural area to Raleigh for the initial capacity examination—it truly can be extensive. The Chair noted that her hope was that between all the Member of the Committee and the stakeholders who are invitees to the table the committee can come up with a solution that will

benefit the counties, the agencies effects, and most of all the defendants. When the defendants are sitting in the jails, there are concerns of if the persons are receiving adequate mental and medical evaluation or treatment. The Chair reiterated that the committee mission is to promote safeguards for everyone, including the general public.

Chair Randleman then opened the floor for comments from Members and attendees.

Chair Randleman proceeded to go around the table and inquire on comments from the Members. She started with Representative Burr to see if he had any comments – he had none at that time. Rep. John Faircloth, former chief of police, said that he understood the concern in the illustration that Chair Randleman used. He felt that it probably was not a common thing but has happened more than once. Representative Faircloth noted that the state does have circular situation, and the committee is looking solution that takes into account the rights of the defendants and the safety of the public. He stated that there does not seem to be a clear answer from the narrative the Chair provided.

Chair Randleman noted that when she began discussions with NCGA Staff and other stakeholders at the beginning of the session, possible options developed, but those options were not explored in depth. The purpose of the committee is to find and discuss those options that may alleviate the circular problem.

Representative Faircloth followed up with a question to Chair Randleman. He asked if options appear to be available to answer these concerns. Chair Randleman noted that, yes, there possibly some.

Rep. Hurley was recognized for comments and noted that she has been speaking with attorneys, her district attorney, and anyone else who will speak with her about the situation because it seems as if incapacity to proceed process is circular. Adding that, the trouble that the district attorney is having concerns tainted information on the treatment of individuals in the system and if those persons cannot continue. She did not know if those persons were periodically evaluated, but if they are, are there any ways to tell the district attorney when the person is and how that process is going. Representative Hurley noted that she had a few more officials she wishes to speak to about the matter; however, she did know that the sheriffs had trouble with transportation costs due to the current economic situation.

Chair Randleman noted that the Eddie Caldwell of the North Carolina Sheriffs Association has been invited to participate in the discussion.

Chair Randleman then asked Representative McGuirt, former Sheriff, if he had any comments. He claimed that he was aware of a problem just like the situation in the Wilkes County that Chair Randleman had discussed. In Anson County, he recalled a man who was confined for what he believed might have been 10 or 12 years. He was also caught up in a back-and-forth process, and the district attorney was reluctant to take certain actions because it would result in a man who has been charged with murder being released back into society, where he is now. He is back in the community, because it was determined that he was incapable of standing trial, and is in and out of treatment. Representative McGuirt noted that these are situations that could be dangerous to the public as well as a grave concern for a person who was previously being medicated. He also went on to say that that he did not have a solution, but he is interested in what the professionals say on the matter. He also stated that it would be advantage for the Criminal Defense Bar to be present, and perhaps National Alliance on Mental Illness.

Chair Randleman observed that a seat and name plate and been provided for the North Carolina Advocates for Justice (NCAJ), but she did not see any one at that spot on the table. She then asked if anyone was there from the NCAJ, with no response from the table or audience.

The Chair then noted that another thing she had noticed was that smaller counties may only have superior court three times a year, whether they need it or not. This meaning, if you have a defendant who is sitting on a smaller county that only have a limited number of superior court sessions, unless they commute that person to another county, the defendant may sit for weeks or months waiting on the hearing to be held where it is determined if they go to Central Prison or the state hospital.

The Chair then asked if the other invitees sitting at the table had any input.

Mr. John Rubin of the UNC School of Government noted that The UNC School of Government does a lot of training, consultation, and research for people, courts, and the criminal justice system. Two of the concerns that he has heard from judges: One, someone is found incapable of proceeding, on the criminal side, they are then committed, and there is a different standard for holding someone on the commitment side. When released from commitment, they come back to the jail for the criminal case but they are still incapable of proceeding. He noted that judges are very frustrated about that, and he is not sure what the solution is the address the incapacity, at some point in the process, and have that individual proceed to trial when they come back to the jail. Second, someone who is incapable of proceeding to trail is not going to gain the capacity to defend themselves, but they do not meet the standards of being involuntarily committed – which might have been the case in Mr. McGuirt's example for Anson County. Mr. Rubin noted that you may have an individual who appears to have committed a dangerous offense, they cannot proceed to trail and cannot be held in the criminal case, but they do not meet the commitment standard either. Judges, prosecutors, and others are considering what they do with that individual.

Chair Randleman asked the committee if they had any questions for Mr. Rubin. Hearing none, she asked him if a declaration of competency would be necessary before individual in his example would be able to proceed to trial. Mr. Rubin said, yes, that is true.

Chair Randleman then recognized the North Carolina Conference of District Attorneys. Present was Brad Greenway, District Attorney for the 29A District. He noted that the situation that the Chair presented from Wilkes County was similar to one he was familiar with—except in this case the defendant had killed his son. The individual was not capable to proceed, and, in his opinion, was not likely to ever gain the capacity to proceed. Mr. Greenway noted the gentleman had a condition that was treatable with medication and was not eligible for commitment—adding that it is frustrating because families are all concerned about what is going to happen if the individual is released back in the community and he or she ends up off the medication they were prescribed. Mr. Greenway said that the problem may not be as severe as some persons may think. He is not aware of the defense attorney or district attorneys that were holding misdemeanants in jail. He stated that typically they would dismiss those cases—hopefully, within 90 days of the person being charged. He also noted that this may not be the same practice throughout the state, but misdemeanor problems are quickly solved by dismissal of the case in his district. He also stated that non-violent felons were not much of a problem either. The crux of the matter is the individuals who have been violent and murderers or seriously assaulted someone. Mr. Greenway questioned, what do you do with them?

Chair Randleman recognized Representative Burr for a comment.

Representative Burr mentioned that he believes this is a problem. As a third generation bail bondsman, every county and community in the state has this issue. Mr. Burr noted that his community has several, and it seems like they are treated as hot potatoes. The individuals are brought into the jail, and sheriffs work as quickly as possible to get them out of that jail and unsecure their bonds, so they do not have to deal with them. Mr. Burr added, the court system and judges are moving as quick as they can to dismiss charges with the DA's so that they do not have to deal with them, and individuals ending up back on the streets. And within a month, they are doing the whole process again and the same people. Representative Burr said that he was talking about persons who were not involved minor crimes but violent crimes. He recounted one of the first major instances he could recall was a situation where a family was murdered and buried under a trailer, and now the person is out living on the streets. Representative Burr said that something has to be addressed. It is a problem in every community. Mr. Burr concluded by stating that if it is one or two people in each community that is one or two people that should not be treated like a hot potato – at that point, there is also the potential for more danger to society.

Chair Randleman mentioned Andrew Cagle of the North Carolina Sheriffs Association (NCSA). She noted that he was present for Eddie Caldwell in order to speak on behalf of the NCSA. The Chair asked Andrew to compile for the committee the number of people in this situation the sheriffs hold on average. She also asked him if they individualized facilities or cells to house people incapable of proceeding or are they just thrown into jail with everyone else.

Mr. Cagle responded to Chair Randleman by informing her that his organization just completed a jail survey and that might be of use to the committee in answering her questions. He noted that the information might contain at least the figures on what jails are capable of holding. It was Mr. Cagle's understanding that not too many jails have such capabilities. He went on to state that transportation costs on the Sheriffs and also the deputy who has to be taken off the road and left with the individual in the hospital are a concern to the NCSA.

Chair Randleman noted that availability of space within jail facilities to segregate this specific population would be of great interest to the committee.

Chair Randleman asked Mildred Spearman of The Administrative Office of the Courts if they had any comments. Ms. Spearman said that they did not have any at that time.

The Chair recognized Mark Hazelrigg who is a doctor and Central Regional Hospital and Director of Outpatient Evaluations. Dr. Hazelrigg thanked the Chair for having this meeting. He noted that these were really important issues. He wanted to bring forth two concerns. He seconded John Rubin of the UNC School of Government by stating that there are a couple big disconnects in the system. One is that the standard for being found incapable to proceed, in the first place, is different from the standard for being held in commitment involuntarily. Dr. Hazelrigg said he did not know how to reconcile those differences, and we have ended up in the dilemmas that the committee has brought up because they are different. The other big issue that he wanted to raise is the process where someone goes to court and is found incapable to proceed and then they are committed to a hospital. There is nothing in the statue that mandates or even suggests that the hospitals provide services with the goal being to restore an individual capacity to proceed. The treatment in the hospital is treatment of mental illness and treatment to decrease dangerousness by medication means. There is nothing done to address restoration of capacity in the statutes. Dr. Hazelrigg stated that he thinks they treat mental illness and

decrease dangerousness in the state hospitals because they feel like it is the right thing to do as far as treatment options go. However, it might be better to have some guidance or some specificity.

The Chair asked if when Dr. Hazelrigg was speaking of the state hospitals if he talking about Broughton and the regional hospitals. Dr. Hazelrigg agreed.

The Chair then recognized Richard Slipsky, Special Deputy Director for the Attorney General Office. He also referenced the comment by John Rubin and wanted to add one additional piece of information that adds to the frustration within this process. Mr. Slipsky noted that most of the cases start in Superior Court, and most of the time a Superior Court Judge is making an order. The individual then ends up at the psych hospital and goes through the commitment process, assuming he is mentally ill and dangerous. The way the individual then gets back to the jail is through District Court, since the doctor in those cases is not allowed to discharge the patient. Mr. Slipsky stated that what ends up happening is a different court, usually a lower court, seen by a higher court as overruling. This does not make the Superior Court Judge happy, adding to the frustration. Mr. Slipsky mentioned the costs of transportation and has spoken with many sheriffs about those issues, but he wanted to mention one other cost. Mr. Slipsky stated that it costs about \$900 a day to keep someone at one of the state hospitals—every day an individual who is in a state hospital, and should not be, is costing the state a lot of money. Mr. Slipsky said that Dr. Hazelrigg was correct that when he stated that the statutes do not specify restorative measures for capacity, and that is the practice. He stated that most patients who are stuck in a hospital would like to have their charges cleared—those people would like to be able to go to court and face the accusers and get the situation resolved. For most people, Mr. Slipsky believes that is the fact. The problem that they are facing in the hospital could very well be a treatment plan, and it certainly would not hurt to have it in statute - that is what we should be working towards. He commented that NAMI or some other advocacy organization needs to be here. As the AG, he stated he was not position to advocate for individuals, but he noted that it did strike him that no one was present to talk about the mentally ill. He went on to say that the thought of just putting people in hospitals because they once committed a horrible offense, leaving them there forever, with no possibility of that individual ever recovering or becoming non-dangerous—that really should not be what the committee is all about.

The Chair noted that North Carolina Law does not allow for the situation Mr. Slipsky was referencing. He agreed and said someone should be here to speak on their behalf. The Chair reassured Mr. Slipsky that persons in those capacities would be invited to the next meeting.

Chair Randleman recognized Peg Dorer of the North Carolina Conference of District Attorneys. Mrs. Dorer said that everyone who has spoken has encapsulated the problem, noting that every time the conversation on this topic emerges that it quickly becomes apparent that it is far bigger than anybody thinks. She also mentioned that every county and every district attorney has a handful or more stories like what was heard during this meeting. Chair Randleman asked if Mrs. Dorer could line up any more district attorneys to come and speak. She agreed.

The Chair then opened the floor to members of the public to provide any statements or comments if they so wished.

Dr. Nancy Laney, representing the North Carolina Psychological Association (NCPA) and Forensic Evaluator at Central Regional Hospital, mentioned that individual with mental retardation (MR) are in the system and that someone should be at the table to the MR population in the system.

Julia Adams, Director of Government Relations for The Arc of North Carolina, she stated that they represent people with intellectual developmental disabilities and mental retardation.

Chair Randleman recognized Robin Huffman, Executive Director NCPA. Mrs. Huffman mentioned that her organization has psychiatrists and physicians who are in the private sector as well as those working in the system who are very interested in the topic and hold many concerns and thoughts they would like to share.

The Chair confirmed that Julia Adams would have a seat at the table at the next meeting.

Chair Randleman gave notice that the next meeting would be January 11, 2012 at 2pm, room 415 LOB.

There being no further business, the meeting of the Legislative Research Commission Subcommittee on Incapacity to Proceed was adjourned at 3:15 PM.

Respectfully Submitted,

Representative Shirley B. Randleman, Chair

James White, Committee Clerk

## Attachment #1 LRC Authorizing Letter



#### Pflice of the Speaker North Carolina House of Representatives Raleigh, North Carolina 27601-1096

THOM TILLIS SPEAKER

September 12, 2011

Representative Tim Moore
Chairman
Legislative Research Commission
North Carolina House of Representatives
16 W. Jones Street, Room 1326
Raleigh, NC 27601-1096

#### Dear Representative Moore:

As you prepare your agenda for the Legislative Research Commission (the "Commission"), pursuant to G.S. 120-30.17, I hereby authorize the Commission to appoint subcommittees to study the following matters during the interim. House appointees to each study committee are also identified. Please restrict each study committee to a maximum of four meetings unless additional meetings are pre-approved by my office.

#### **Studies Approved in Conjunction with the Senate:**

- North Carolina Alcoholic Beverage Control System Study the following aspects of the current State and local alcoholic beverage control (ABC) in North Carolina:
  - (1) Whether the involvement in the distribution and sale of spirituous liquor is a core government function of State and local government.
  - (2) The privatization and divestiture of the ABC system, including potential recurring and nonrecurring revenue from the divestiture of the ABC system's current assets.

- (1) Financial stability of the current independent systems on a historic basis and the anticipated financial stability of a combined system.
- (2) Cost-benefit analysis of a combined system, including a review of assets and liabilities; personnel needs; equipment and infrastructure replacement schedules: facilities leased and owned; and fee schedules.
- (3) Debt obligation.
- (4) Taxpayer investments in the systems.
- (5) Audit of current financials.
- (6) Comparative analysis of the current system to existing public and private systems.
- (7) Conservation and water efficiency practices.
- (8) Best management practices.
- (9) The disposition of property in Article 12 of Chapter 160A of the General Statutes as it relates to a conveyance of a water system.
- (10) The transfer of permits when a water system is conveyed.
- (11) Any local acts applicable to the city or metropolitan sewerage district.
- (12) Other items the Commission deems relevant to the study.

Chair: Moffitt

Members: McGrady, Brawley, Murry, Brisson

3. Make Manufacture While Using Stolen IT an Unfair Act

Chair: T. Moore

Members: Starnes, Mills, Avila, Pridgen

4. Orderly and Expeditious Removal by Landlord of Personal Property of Deceased

The Committee may recommend changes to the General Statutes to provide for the
orderly and expeditious removal by a landlord of the personal property of a decease
tenant where the heirs are not readily identifiable or available to take possession of that
personal property.

**Chair: Howard** 

Members: T. Moore, Blust, Hastings, Stevens, Hilton, Randleman

#### 5. Incapacity to Proceed

The Legislative Research Commission may study the adequacy of the involuntary commitment process for a criminal defendant who lacks the capacity to proceed to trial. In its study, the Commission may consider the impact of current law on the limited resources of local law enforcement, hospitals, mental health facilities, and the State's court system while balancing the rights of the accused, victims, and the safety and the general welfare of the public. The Commission may also consider options for

determining whether a defendant is likely to attain the capacity to proceed to trial in the foreseeable future and at what point in the process that determination should be made. The Commission shall evaluate the statutory option of taking dismissals in these types of cases for defendants who are charged with nonviolent crimes and for defendants who are charged with violent crimes, how often that option is used, and at what point and under what circumstances that option should be used. In addition, the Commission may consider all of the following: issues related to transportation, including the frequency, distance, and cost associated with the required psychiatric evaluations; duration of involuntary commitment for defendants found incapable of proceeding to trial pursuant to Article 56 of Chapter 15A of the General Statutes and involuntarily committed pursuant to Part 7 of Article 5 of Chapter 122C of the General Statutes; and any other issues the Commission considers relevant to this topic.

Chair: Randleman

Members: Burr, Hurley, McGuirt, Faircloth

#### 6. Life Cycle Cost Analysis

The Commission may study the implementation of revised policies on life cycle cost analysis including material cost indexing, open bidding for alternate pavement designs for all TIP projects that exceed \$500,000 in pavement costs, and the 30 year design periods and 45 year analysis periods based upon actual historic schedules and costs.

Chair: Torbett

Members: Murry, Killian, Hilton, Iler, Mills

#### 7. Feasibility of Requiring Certain Reports to Be Filed Electronically

The Commission may study the feasibility and applicability of requiring electronic filing of all reports required to be filed with the State Board of Elections under G.S. 163-278.9, regardless of the amount.

Chair: Lewis

Members: Randleman, Blust, Jones, Ross

#### 8. Criminal Record Expunctions

The Legislative Research Commission may study whether current law strikes an appropriate balance between an employer's need for access to accurate criminal history information about potential employees and the need for a person who committed a relatively minor offense in the distant past to obtain employment in spite of the person's criminal history. If the Legislative Research Commission finds that it may be possible to achieve a better balance between these interests, then the Legislative Research Commission may further consider what type of expunction procedure may be developed and implemented that addresses the interests and concerns of employers,

## Attachment #2 Incapacity to Proceed LRC Budget Estimate

.

	2011-2012 Committee Budget Estimate	
1) Legislative Mem	ibers Subsistence	\$3,120.00
\$104.00	Legislative Subsistence	
X 5	Number of Legislative members	
X 1.5	Half of Members using Two Days of Subsistence	
X <u>4</u>	Number of Meetings	·
= \$3,120.00	Total Legislative Members Subsistence	
2) Non-Legislative	Members Subsistence	\$0.00
	Non-Legislative Members Subsistence	<del>\ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ </del>
x 0	Number of Non-Legislative Members	
X 1.5	Half of Non-Legislative Members using Two Days Subsistence	
X o	Number of Meetings	
= \$0.00	Total Non-Legislative Members Subsistence	
	* \$101.05 Daily Per Diem Rate Plus \$15 Committee Per Diem Rate (GS138-5)	
3) Travel Expense		\$1,400.00
a) Legislative M		
{	\$70.00 Round Trip Reimbursement (Based on 242 miles @ \$0.29 per mile*)	
	X 5 Number of Legislative Members	
	X 4 Number of Meetings	
	= \$1,400.00 Total Travel for Legislative Members	
	\$73.00 Round Trip Reimbursement (Based on 242 miles @ \$0.30 per mile*)  X	
4) Clerical Staff		\$0.00
\$818.00	* Average Salary with Benefits for 5 day work week	
X0	Number of Meetings	
= \$0.00	Total Clerical Staff	
	* Average Weekly Wages for LA, CAI, CAII & CAIII with Fringes Added.	
5) Professional St		\$0.00
	ind Expenses	0.0000
6), Special Travel a	INCLEXPENSES	\$500.00
7) Postage and Te	lephone Expenses	\$0.00
8) Supplies		\$0.00
9) Coping and Prir	tling	\$0.00
10) Reserve		\$500.00
		#300.00
Total		\$5,520.00

## Attachment #3 Incapacity to Proceed Committee Charge

## Legislative Research Commission Subcommittee on Incapacity to Proceed

#### 2011-12 Interim

#### **Committee Charge**

The Legislative Research Commission may study the adequacy of the involuntary commitment process for a criminal defendant who lacks the capacity to proceed to trial. In its study, the Commission may consider the impact of current law on the limited resources of local law enforcement, hospitals, mental health facilities, and the State's court system while balancing the rights of the accused, victims, and the safety and the general welfare of the public. The Commission may also consider options for determining whether a defendant is likely to attain the capacity to proceed to trial in the foreseeable future and at what point in the process that determination should be made. The Commission shall evaluate the statutory option of taking dismissals in these types of cases for defendants who are charged with nonviolent crimes and for defendants who are charged with violent crimes, how often that option is used, and at what point and under what circumstances that option should be used. In addition, the Commission may consider all of the issues related to transportation, followina: including frequency, distance, and cost associated with the required psychiatric evaluations; duration of involuntary commitment for defendants found incapable of proceeding to trial pursuant to Article 56 of Chapter 15A of the General Statutes and involuntarily committed pursuant to Part 7 of Article 5 of Chapter 122C of the General Statutes; and any other issues the Commission considers relevant to this topic.

# Attachment #4 11-9-2011 PowerPoint Presentation Jan Paul, NCGA Staff Attorney

#### \*Begin Presentation\*

Under G.S. 15A-1001 to -1003 (1978), to be competent to stand trial, the accused must be able to understand both the charges against him and the court proceedings, and be able to assist his lawyer effectively in defending himself. G.S. 15A-1001 through 15A-1009 contains the basic standards and procedures for challenging the competency, or capacity to proceed, of a defendant. These provisions deal with the three main phases of a competency challenge: a psychiatric examination; a hearing to determine competency; and the proceedings after a determination of incompetency.

With regard to Standard for Capacity to Proceed to Trial, due process and North Carolina law prohibit the trial or punishment of a person who is legally incompetent. The requirement of competency applies to all phases of a criminal case. No person may be tried, convicted, sentenced or punished if he or she is incompetent. The requirement also applies to juveniles alleged to be delinquent. As for the Test of Capacity, Generally, G.S. 15A-1001(a) sets forth the general standard of capacity to proceed. A defendant is incompetent if, by reason of mental illness or defect, he or she is unable to understand the nature and object of the proceedings, comprehend his or her situation in reference to the proceedings or assist in his or her defense in a rational or reasonable manner. A defendant may be competent to proceed even though his or her competency depends on medication. The defendant's capacity to proceed is evaluated at the time of trial or any other proceeding. The question of capacity may be raised at any time by the defense, court or prosecutor. The standard for capacity to stand trial is not the same as that for the insanity defense. There are different provisions in the law regarding individuals who are either alleging or determined to be found not guilty by reason of insanity.

A defendant must have the capacity to stand trial whether they are charged with a misdemeanor or a felony. Mrs. Paul noted that one concern the Chair brought to her: a situation where the defendant is found incompetent and involuntary committed, but ensuring sufficient monitoring and safeguards against a defendant confinement for a longer period than if they have been convicted for the crime.

A psychiatric examination must occur; that may occur by the defenses psychiatric experts, by a motion, or it can be done by the state facility or local examiner – the option of local examiner usually occurs in misdemeanors and less serious cases. Counsel may obtain a state or local examination by filing a motion questioning the defendant's capacity to proceed and asking that the defendant be evaluated. A defendant may be able to obtain a second examination if the report from the first examination has become stale or the defendant's condition has changed. The prosecution may raise the question of competency and request a competency examination.

If charged with a misdemeanor, the defendant first must be evaluated by a local forensic screener, G.S. 15A-1002(b)(1). The local screener may find the defendant competent or incompetent, or may recommend that the defendant be evaluated further at 24 hour facility. If the defendant is charged with a felony, the court may order a local evaluation or may commit the defendant to 24 hour facility. After completion of the evaluation, the examiner must submit, to the clerk of court, a report of the examination, and a conclusion about whether the individual has the capacity to proceed. Upon conclusion of the examination, G.S. 15A-1002(b) states that a hearing shall be held after a court-ordered competency examination; as a practical matter a hearing generally does not take place unless counsel requests one. The court is permitted to initiate an evaluation on its own motion only if there is evidence to suggest that the defendant is incompetent.

After the examination finding the defendant incapable of proceeding, there are various things that can occur in the criminal justice system. The prosecutor may end up stipulating or agreeing to the entry of an order finding the defendant incompetent to proceed, which triggers other procedures. For example, the court could issue a custody order requiring that the defendant be examined to determine whether or not he or she should be involuntary commitment. The court or prosecutor also may be willing to dismiss the criminal charges. There are various things that can occur and a cycle of various consequences. If the prosecutor is unwilling to dismiss and the defendant is incarcerated, there is ordinarily no reason to delay obtaining an order of incompetency.

With regarding to a hearing, if the prosecutor does not dismiss or does not stipulate to incompetency or the court is unwilling to accept a stipulation, there can be a formal hearing on the defendant's capacity to proceed. Once the court finds the defendant incompetent, whether based on a stipulation or after a hearing, the ensuing procedures are the same. With regard to involuntary commitment, and, if the defendant to not have the capacity to proceed, then the defendant can, but is not always in every case, referred for involuntary commitment.

Mrs. Paul noted that Mr. Pell discussed background in Jackson v. Indiana; once the court enters an order that the defendant lacks the capacity to proceed, then there are concerns about what is going to occur in regards to any possible involuntary commitment and also pending criminal charges. The court found equal protection and due process violations in the indefinite confinement of a defendant found incapable of standing trial. The court held that in absent civil commitment, the court may hold a defendant no longer than a reasonable period of time to determine whether he or she will regain capacity to stand trial. If the defendant is neither likely to regain capacity nor subject to civil commitment on other grounds, he or she must be released. In response to this Supreme Court Case, North Carolina adopted elaborate procedures for the civil commitment of a defendant found incompetent to stand trial.

G.S. 15A-1003 provides that if the court finds the defendant lacks capacity to stand trial then it must decide whether there are reasonable grounds to believe that the defendant meets the criteria for inpatient or outpatient involuntary commitment under G.S. Ch. 122C, Art. 5, Part 7. These criteria differ from the standard of capacity to stand trial. For inpatient commitment, which is confinement at a 24-hour facility, the standard is mentally ill and dangerous to self or others. For outpatient commitment, the standard is mentally ill and in need of treatment to prevent deterioration that would result in dangerousness — under G.S. 122C-261(b). If the court finds grounds for commitment, the law provides that the court is to issue an order to have the defendant taken into custody for examination, the first step in the involuntary commitment process. At several points in the ensuing process, the defendant may be returned to local detention facility or prison to await further action in the criminal case.

The proceedings may go down one of two tracks after the issuance of a custody order, depending on whether the defendant is charged with a violent or nonviolent offense.

A first examination is discussed in G.S. 122C-263. In cases involving nonviolent offenses, the defendant is examined, ideally, locally within a day or two after issuance of the custody order. The examiner may find no grounds for commitment, grounds for outpatient commitment only, or grounds for inpatient commitment. If the examiner does not find grounds for inpatient commitment, and criminal charges are no longer pending, the defendant is released. If the examiner does not find grounds for inpatient

commitment, and the defendant has pending charges and has not obtained pretrial release, the defendant may be returned to jail to await further action in the criminal case.

G.S. 122C-266 provides for a second examination. If the local examiner finds grounds for inpatient commitment, the defendant is taken to a 24-hour facility, which must conduct a second examination within one day of the defendant's arrival. The second examiner has the same options as first examiner. If the examiner finds no grounds for commitment or grounds for outpatient commitment only, the defendant is released—possibly back to jail, but If the examiner finds grounds for commitment—inpatient or outpatient—the n the statue provides that the district court to hold a hearing within 10 working days of the day the defendant was taken into custody. If the facility has recommended inpatient treatment, it holds the defendant pending the hearing. The second examination may occur at named facilities described in the statute and usually goes to one of the state hospitals for that.

With regard to release pending hearing, G.S. 122C-267 thru 277 contains provisions throughout that discuss what occurs to a defendant upon certain findings. At the district court hearing on inpatient commitment, the judge has the same options as previously mentioned—no commitment, outpatient commitment, or inpatient commitment. The judge also may impose a combination of inpatient and outpatient commitment. The first two options require the defendant's release, perhaps back to jail unless some grounds or eligibility for pretrial release. The judge may order inpatient commitment for an initial period up to 90 days. The court may order inpatient commitment for six-months and one-year periods thereafter, under G.S. 122C-271, -276. When a defendant charged with a nonviolent offense no longer meets the criteria for inpatient commitment, the hospital must release the defendant, possibly back to jail, and notify the court if the defendant is to be released.

The procedure is different from those who are charged with violent crimes, including assault with a deadly weapon. Special rules apply to keep the defendant in continuous custody. If the court finds that the defendant lacks capacity and that grounds exist for involuntary commitment, a law-enforcement officer must take the defendant directly to a 24-hour facility. No local examination occurs, unlike the procedure for nonviolent offenses. The 24-hour facility must hold the defendant pending a hearing in district court to determine whether the defendant meets the criteria for commitment. The statues specifically state that the facility may not release the defendant upon finding that he or she does not meet inpatient-commitment criteria, as it can with nonviolent offenses. If the district court imposes inpatient commitment, a hearing must be held before the commitment is terminated; the prosecutor in the criminal case may represent the state's interest at the hearing. Generally, the in house counsels at the state facilities are representing—something that was added to the law.

The criminal case is not completely held in abeyance while the defendant lacks capacity to proceed. Certain motions can be heard and base scheduling things can occur and arraignment can occur.

Under G.S. 15A-1008, the court may dismiss the criminal charges against an incompetent defendant if it appears to the court's satisfaction that the defendant will not gain the capacity to proceed; the defendant has been deprived of his or her liberty for a period equal to or greater than the maximum permissible period of confinement for the alleged offense; or, in the case of a misdemeanors, five years have expired from the date of the determination of incapacity to proceed; and, in the case of a felony, ten years have gone by.

Under G.S. 15A-1009, the prosecutor had the discretion to dismiss the charges with leave, referred to as a VL, after the court issues that the defendant lacks that capacity to proceed. A dismissal with leave

removes the case from the docket, but tolls the statute of limitation. If the defendant is subsequently determined to regain his or her capacity to proceed, the court can reinstate those charges. As a practical matter, there may be questions as to how the state is going to be able to find out a defendant has regained the capacity to proceed, once a voluntary dismissal with leave has be entered.

If inpatient involuntary commitment is not imposed, the court may set conditions of pretrial release, including release of the defendant to the custody of a person or organization agreeing to supervise the defendant. Other motions can occur. The court may go forward with any motions that defense counsel can handle without the assistance of the defendant.

G.S. 15A-1007(b) provides that the court may re-determine capacity at any time during the pendency of the criminal case.

At termination of commitment, if the defendant no longer meets the criteria for inpatient commitment, the court may decide to order a further evaluation on capacity to proceed. Again, there is a concern that the statues can be somewhat circular, leading to an unending cycle.

With regard to changes in the law over time, and not going into detail on every change in the law, but at common law, there was a right to detain a mentally ill person in order to protect that person from self-injury and the public from injury at the hands of that individual. The legislature's authorizing emergency commitment replaced the common-law rule. Former G.S. 122-58.4 provided that only mentally ill persons in need of restraint could be deprived of their liberty. This could only be assured by the doctor making the required examination before executing the certificate of incapacity to proceed.

Statutes were amended in 1945. There was an amendment that was in G.S. 122-54 and is now in 122C-251(d), which was added to impose a same-sex transportation requirement for law enforcement. The person transporting an individual to a facility, or a responsible individual, is to be of the same gender as the person being transported.

In 1972, Jackson v. Indianan came down form the U.S. Supreme Court. In response to Jackson v. Indiana in 1972, in 1973, North Carolina adopted elaborate procedures to address the civil commitment of a defendant found incompetent to stand trial.

During 1973-77, the statutes were amended to require a showing that the respondent was imminently dangerous to himself or others; and establish full-time attorneys for patients at the four state hospitals, without providing representation for the state.

In 1973 and 1974, the GA completely rewrote the involuntary commitment laws for mentally ill persons and inebriates to conform it to constitutional due process requirements. Before a person may be committed, a magistrate must find that he was probably mentally ill or inebriate and imminently dangerous to himself or others, and a local physician must concur in this finding. If the magistrate and the physician so find, the sheriff transports the respondent to a mental health facility that could be in a different county. Within 10 days after being taken into custody, a sheriff from the county where the proceedings were initiated, home court, must pick up the respondent at the facility and return him or her to the home county for a hearing before a district court judge. At this hearing, the judge must determine whether the respondent is mentally ill or inebriate and imminently dangerous to himself or others, then could be confined to a mental health facility for 90 days.

In 1975, the term Judicial Hospitalization was changed to Involuntary Commitment.

In 1976, near the end of the budget act deliberations, the House added a special provision to alleviate the sheriffs' complaints. This new provision was to relieve the sheriffs of the duty of transporting respondent between counties. G.S. 122-58.7A was enacted, providing that unless the respondent objects by means of counsel, the district court hearing will be held in the county in which the facility is located rather than the home county. Records of the proceedings are transferred from the home county to the next.

In 1979, the Gen Assembly made several changes to make commitment easier: The requirement that dangerousness be imminent was dropped; A full-time associate attorney general was added at each of the four state mental hospitals to represent the state's interests; The terminology danger to self was redefined to include patients who showed severely impaired insight or judgment in order to allow more clinical input into the decision whether to commit; Changes were also made in the mechanism of outpatient commitment. Also, before 1979, the statues did not specify satisfactory enforcement procedures to be followed when respondents did not comply with court-ordered outpatient treatment. The 1979 statutory changes created a mechanism to permit enforcement of outpatient treatment orders, by requiring the committing court to notify the receiving facility of the commitment, giving the respondent a copy of his treatment plan before being discharged to the opt facility, requiring the director of the opt facility to notify the associate AG if the respondent wasn't cooperating with the outpatient plan, requiring the associate AG to notify the clerk in the county where the respondent had been ordered committed for opt treatment and to schedule a rehearing, and requiring the clerk to issue a custody order to return the respondent to the inpatient facility. Judges had to make findings of fact that outpatient treatment was available and appropriate.

In 1983, General Assembly enacted, An Act Regarding Involuntary Commitment of Persons Found Incapable of Proceeding or Not Guilty By Reason of Insanity, and made changes to G.S. 15A and Chapter 122.

In 1985, Initially, The Criminal Procedure Act provided for reports to be sent automatically to the defense and prosecution. The 1979 N.C. Session Laws added a provision, which was part of a bill entitled: An act to provide that an indigent defendant's competency evaluation report will not be forwarded to the district attorney." The same year, the Mental Health, Mental Retardation and Substance Abuse Act of 1985 was enacted, and significant revisions were made to Chapter 122 - the mental health laws.

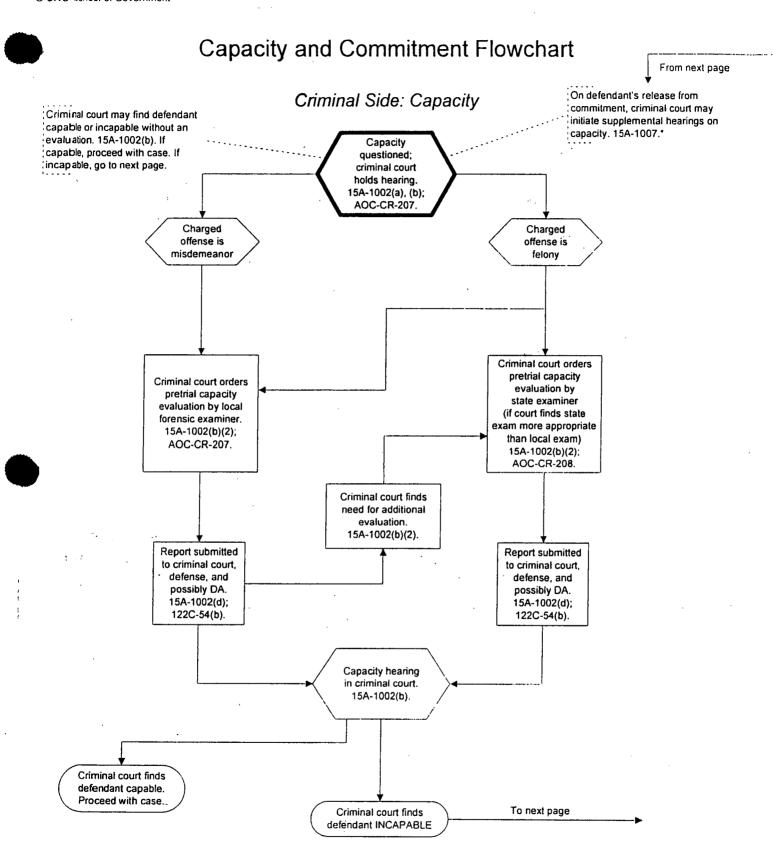
In 1987, An Act to Adapt the Mental Health Admissions Law to Permit Emergency Admissions for Persons Needing Immediate Hospitalization made substantial changes to 122C.

The statutory changes have been substantial over the years, but this committee will be looking at whether or not that should occur in the future.

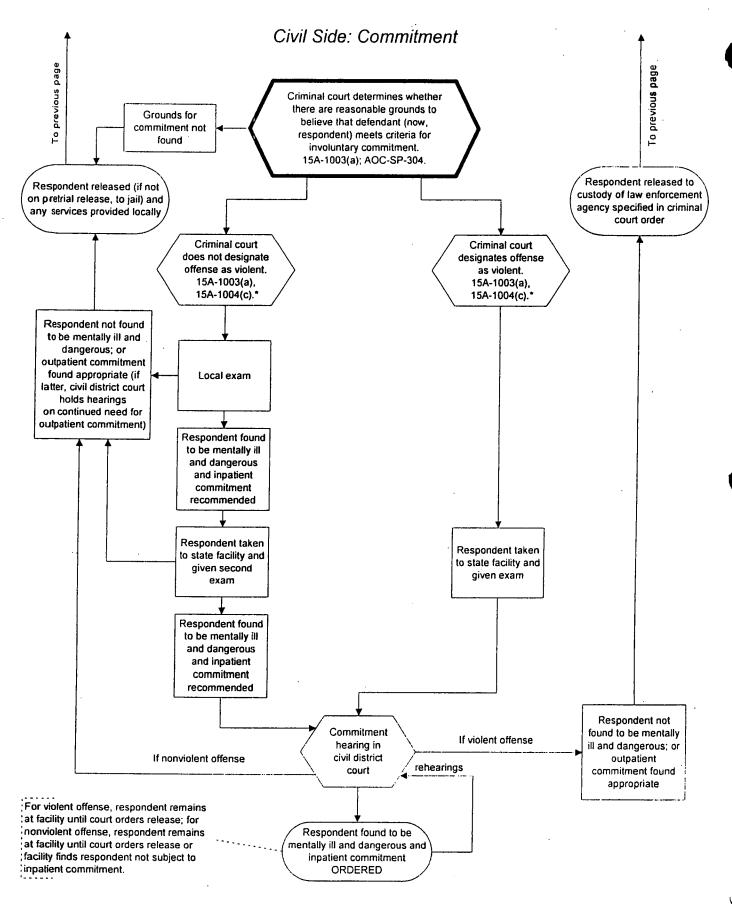
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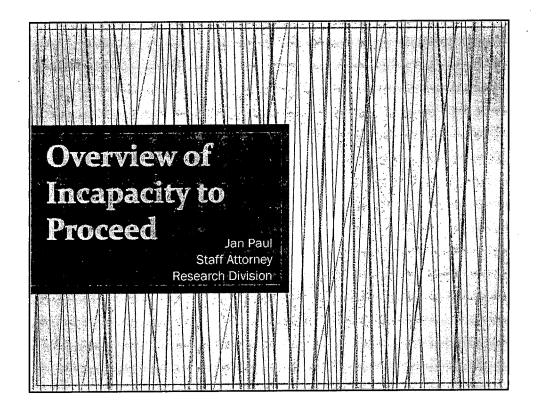
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At a supplemental hearing, the court may find the defendant capable or incapable of proceeding, modify pretrial release conditions, find that the defendant meets the statutory criteria for dismissal under GS 15A-1008, or find that the defendant is constitutionally entitled to dismissal under Jackson v. Indiana, 406 U.S. 715 (1972). If the defendant is incapable and is not entitled to dismissal, the prosecutor may dismiss with or without leave under GS 15A-1009 (although dismissal with leave may make it difficult for the defendant to obtain treatment because criminal charges remain pending).



<sup>\*</sup>Various statutes in GS 122C distinguish between the handling of nonviolent and violent offenses following a finding of incapacity and referral for commitment proceedings. For a more detailed discussion of those requirements, see Chapter 8 of the North Carolina Civil Commitment Manual, available at www.ncids.org under Reference Manuals.



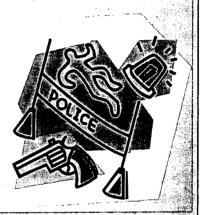
# I. Standard for Capacity to Proceed to Trial

- > Requirement of Capacity
- > Test of Capacity
  - **GS 15A-1001(a)**
  - Mental Illness or Defect
  - Capabilities
  - Understand nature and object of proceedings
    - · Comprehend his situation relative to the proceedings ·
    - Ability to assist in defense in a rational or reasonable manner
      - Ability to cooperate with counsel
- Medication
- Time of Determination
  - GS 15A-1002
- Compared to Standard for Insanity Defense

## II. Type of Crime Charged

- > Misdemeanors
- > Felonies

NOTE: Period of Confinement



### III. Psychiatric Examination

- ▶By Private expert
- ➤ By State facility or local examiner



#### AOC Forms:

- \* AOC-CR-207 (Local)
- 💌 AOC-CR-208 (Central Regional)

### IV. Examination Process

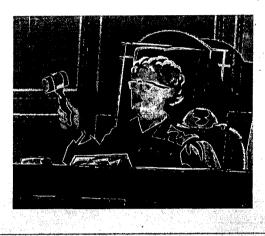
- > First Examination
- > Second Examination
  - Motion for Examination by Prosecutor
- > Who Conducts Examination
  - Misdemeanors GS 15A-1002(b)(1)
  - ■Felonies GS 15A-1002(b)(2)
- > Report of Examination

### V. Post-Examination Procedure

- ➤ After Examination Finding Defendant Capable to Proceed
- > After Examination Finding Defendant Incapable to Proceed
  - GS 15A-1002(b1)
    - Dismissal
    - Stipulation
    - Hearing
    - Involuntary Commitment Under GS Chapter 122C (AOC-SP-304)

### VI. Hearing on Capacity to Proceed

GS 15A-1002(b)



## VII. Procedure After Entry of Order of Incapacity to Proceed

- ➤ Constitutional Background
  - Jackson v. Indiana, 406 US 715 (1972)
    - · Equal Protection
    - · Due Process
- ➤ Referral for Involuntary Commitment under GS Chapter 122C, Article 5, Part 7
  - \* GS 15A-1003
  - \* GS 122C-261(e)
  - GS 122C-263

## VII. Procedure After Order of Incapacity to Proceed (cont'd)

### ➢ Grounds for Involuntary Commitment

GS 122C-261

- Mentally ill and
- Dangerous to self or others, or
- In need of treatment to prevent further disability or deterioration that would predictably result in dangerousness

## VII. Procedure After Order of Incapacity to Proceed (cont'd)

## Commitment Procedure for Nonviolent Offenses

- First Examination (local)
  - GS 122C-263
- Second Examination
  - GS 122C-266
- Release Pending Hearing
  - GS 122C-277
- Commitment Hearing and Rehearing(s)
  - GS 122C-267 thru GS 122C-277
- Termination of Commitment

# VII. Procedure After Order of Incapacity to Proceed (comt'd)

- > Commitment Procedure for Violent Offenses
  - Directly to 24-hour facility
    - GS 15A-1003(a); GS 122C-263(b)(2); GS 122C-266(b)
  - Release Pending Hearing
    - GS 122C-252; GS 122C-266(b); GS 122C-277(b)
  - Termination of Commitment

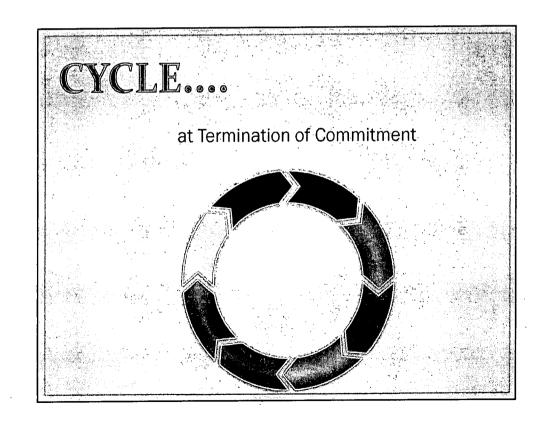
## VII. Procedure After Order of Incapacity to Proceed (comt'd)

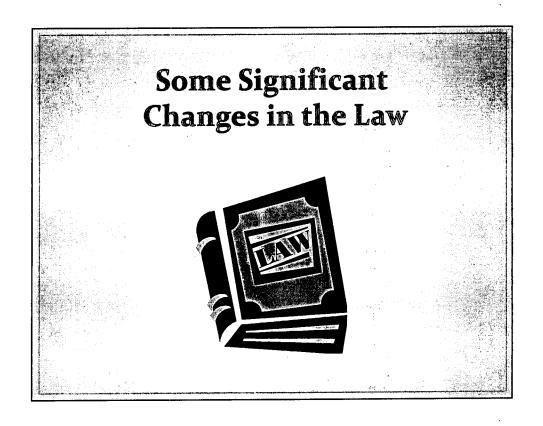
- Disposition of Criminal Case While Defendant Lacks Capacity to Proceed
  - Orders for Safeguarding of Defendant and Return for Trial (GS 15A-1004)
    - Dismissal of Charges by Court
      - GS 15A-1008; see Jackson v. Indiana
    - Dismissal of Charges by Prosecutor
      - GS 15A-1009
    - Pretrial Release
      - GS 15A-1004(b); see Jackson v. Indiana
    - Other Motions
      - GS 15A-1001(b); see Jackson v. Indiana

# VII. Procedure After Order of Incapacity to Proceed (cont'd)

- > Redetermination of Capacity
  - GS 15A-1004 through GS 15A-1007







#### CHAPTER 15A SUBCHAPTER X. GENERAL TRIAL PROCEDURE.

Article 56. Incapacity to Proceed.

#### § 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. (1973, c. 1286, s. 1.)

### § 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 Session Laws 1989, c. 486, s. 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. (1973, c. 1286, s. 1; 1975, c. 166, ss. 20, 27; 1977, cc. 25, 860; 1979, 2nd Sess., c. 1313; 1985, c. 588; c. 589, s. 9; 1989, c. 486, s. 1; 1991, c. 636, s. 19(b); 1995, c. 299, s. 1; 1995 (Reg. Sess., 1996), c. 742, ss. 13, 14.)

#### § 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. (1973, c. 1286, s. 1; 1975, c. 166, s. 20; 1983, c. 380, s. 1; 1985, c. 589, s. 10; 1987, c. 596, s. 5.)

§ 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. (1973, c. 1286, s. 1; 1975, c. 166, s. 20; 1983, c. 380, s. 2; c. 460, s. 2; 1985, c. 589, s. 11.)

§ 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. (1973, c. 1286, s. 1.)

§ 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. (1973, c. 1286, s. 1.)

#### § 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. (1973, c. 1286, s. 1.)

#### § 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. (1973, c. 1286, s. 1.)

#### § 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. (1983, c. 460, s. 1.)

§ 122C-252. Twenty-four hour facilities for custody and treatment of involuntary clients.

State facilities, 24-hour facilities licensed under this Chapter or hospitals licensed under Chapter 131E may be designated by the Secretary as facilities for the custody and treatment of involuntary clients. Designation of these facilities shall be made in accordance with rules of the Secretary that assure the protection of the client and the general public. Facilities so designated may detain a client under the procedures of Parts 7 and 8 of this Article both before a district court hearing and after commitment of the respondent. (1973, c. 726, s. 1; c. 1408, s. 1; 1977, c. 400, s. 4; c. 679, s. 8; c. 739, s. 1; 1979, c. 358, s. 27; c. 915, s. 4; 1983, c. 380, ss. 4, 10; c. 638, ss. 6, 7, 25.1; c. 864, s. 4; 1985, c. 589, s. 2.)

#### **CHAPTER 122C**

#### Article 5.

Procedure for Admission and Discharge of Clients.

Part 7. Involuntary Commitment of the Mentally Ill; Facilities for the Mentally Ill.

## § 122C-261. Affidavit and petition before clerk or magistrate when immediate hospitalization is not necessary; custody order.

- (a) Anyone who has knowledge of an individual who is mentally ill and either (i) dangerous to self, as defined in G.S. 122C-3(11)a., or dangerous to others, as defined in G.S. 122C-3(11)b., or (ii) in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness, may appear before a clerk or assistant or deputy clerk of superior court or a magistrate and execute an affidavit to this effect, and petition the clerk or magistrate for issuance of an order to take the respondent into custody for examination by a physician or eligible psychologist. The affidavit shall include the facts on which the affiant's opinion is based. If the affiant has knowledge or reasonably believes that the respondent, in addition to being mentally ill, is also mentally retarded, this fact shall be stated in the affidavit. Jurisdiction under this subsection is in the clerk or magistrate in the county where the respondent resides or is found.
- (b) If the clerk or magistrate finds reasonable grounds to believe that the facts alleged in the affidavit are true and that the respondent is probably mentally ill and either (i) dangerous to self, as defined in G.S. 122C-3(11)a., or dangerous to others, as defined in G.S. 122C-3(11)b., or (ii) in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness, the clerk or magistrate shall issue an order to a law enforcement officer or any other person authorized under G.S. 122C-251 to take the respondent into custody for examination by a physician or eligible psychologist. If the clerk or magistrate finds that, in addition to probably being mentally ill, the respondent is also probably mentally retarded, the clerk or magistrate shall contact the area authority before issuing a custody order and the area authority shall designate the facility to which the respondent is to be taken for examination by a physician or eligible psychologist. The clerk or magistrate shall provide the petitioner and the respondent, if present, with specific information regarding the next steps that will occur for the respondent.
- (c) If the clerk or magistrate issues a custody order, the clerk or magistrate shall also make inquiry in any reliable way as to whether the respondent is indigent within the meaning of G.S. 7A-450. A magistrate shall report the result of this inquiry to the clerk.
- (d) If the affiant is a physician or eligible psychologist, the affiant may execute the affidavit before any official authorized to administer oaths. This affiant is not required to appear before the clerk or magistrate for this purpose. This affiant shall file the affidavit with the clerk or magistrate by delivering to the clerk or magistrate the original affidavit or a copy in paper form that is printed through the facsimile transmission of the affidavit. If the affidavit is filed through facsimile transmission, the affiant shall mail the original affidavit no later than five days after the facsimile transmission of the affidavit to the clerk or magistrate to be filed by the clerk or magistrate with the facsimile copy of the affidavit. This affiant's examination shall comply with the requirements of the initial examination as provided in G.S. 122C-263(c). If the physician or eligible psychologist recommends outpatient commitment and the clerk or magistrate finds probable cause to believe that the respondent meets the criteria for outpatient commitment, the clerk or magistrate shall issue an order that a hearing before a district court

judge be held to determine whether the respondent will be involuntarily committed. The physician or eligible psychologist shall provide the respondent with written notice of any scheduled appointment and the name, address, and telephone number of the proposed outpatient treatment physician or center. The physician or eligible psychologist shall contact the local management entity that serves the county where the respondent resides or the local management entity that coordinated services for the respondent to inform the local management entity that the respondent has been scheduled for an appointment with an outpatient treatment physician or center. If the physician or eligible psychologist recommends inpatient commitment and the clerk or magistrate finds probable cause to believe that the respondent meets the criteria for inpatient commitment, the clerk or magistrate shall issue an order for transportation to or custody at a 24-hour facility described in G.S. 122C-252, provided that if a 24-hour facility is not immediately available or appropriate to the respondent's medical condition, the respondent may be temporarily detained under appropriate supervision and, upon further examination, released in accordance with G.S. 122C-263(d)(2). If the clerk or magistrate finds probable cause to believe that the respondent, in addition to being mentally ill, is also mentally retarded, the clerk or magistrate shall contact the area authority before issuing the order and the area authority shall designate the facility to which the respondent is to be transported. If a physician or eligible psychologist executes an affidavit for inpatient commitment of a respondent, a second physician shall be required to perform the examination required by G.S. 122C-266.

- (e) Upon receipt of the custody order of the clerk or magistrate or a custody order issued by the court pursuant to G.S. 15A-1003, a law enforcement officer or other person designated in the order shall take the respondent into custody within 24 hours after the order is signed, and proceed according to G.S. 122C-263. The custody order is valid throughout the State.
- (f) When a petition is filed for an individual who is a resident of a single portal area, the procedures for examination by a physician or eligible psychologist as set forth in G.S. 122C-263 shall be carried out in accordance with the area plan. Prior to issuance of a custody order for a respondent who resides in an area authority with a single portal plan, the clerk or magistrate shall communicate with the area authority to determine the appropriate 24-hour facility to which the respondent should be admitted according to the area plan or to determine if there are more appropriate resources available through the area authority to assist the petitioner or the respondent. When an individual from a single portal area is presented for commitment at a 24-hour area or State facility directly, the individual may not be accepted for admission until the facility notifies the area authority and the area authority agrees to the admission. If the area authority does not agree to the admission, it shall determine the appropriate 24-hour facility to which the individual should be admitted according to the area plan or determine if there are more appropriate resources available through the area authority to assist the individual. If the area authority agrees to the admission, further planning of treatment for the client is the joint responsibility of the area authority and the facility as prescribed in the area plan.

Notwithstanding the provisions of this section, in no event shall an individual known or reasonably believed to be mentally retarded be admitted to a State psychiatric hospital, except as follows:

- (1) Persons described in G.S. 122C-266(b);
- (2) Persons admitted pursuant to G.S. 15A-1321;
- (3) Respondents who are so extremely dangerous as to pose a serious threat to the community and to other patients committed to non-State hospital psychiatric inpatient units, as determined by the Director of the Division of Mental

- Health, Developmental Disabilities, and Substance Abuse Services or his designee; and
- (4) Respondents who are so gravely disabled by both multiple disorders and medical fragility or multiple disorders and deafness that alternative care is inappropriate, as determined by the Director of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services or his designee.

Individuals transported to a State facility for the mentally ill who are not admitted by the facility may be transported by law enforcement officers or designated staff of the State facility in State-owned vehicles to an appropriate 24-hour facility that provides psychiatric inpatient care.

No later than 24 hours after the transfer, the responsible professional at the original facility shall notify the petitioner, the clerk of court, and, if consent is granted by the respondent, the next of kin, that the transfer has been completed. (1973, c. 726, s. 1; c. 1408, s. 1; 1977, c. 400, s. 3; 1979, c. 164, s. 2; c. 915, ss. 3, 18; 1983, c. 383, s. 5; c. 638, ss. 3-5; c. 864, s. 4; 1985, c. 589, s. 2; c. 695, ss. 2, 4; 1985 (Reg. Sess., 1986), c. 863, s. 17; 1989 (Reg. Sess., 1990), c. 823, ss. 1, 2; c. 1024, s. 27.1; 1991, c. 37, s. 7; 1995 (Reg. Sess., 1996), c. 739, s. 6; 1997-456, s. 47; 2004-23, s. 1(a); 2005-135, s. 1; 2009-315, s. 1; 2009-340, s. 1.)

### § 122C-262. Special emergency procedure for individuals needing immediate hospitalization.

- (a) Anyone, including a law enforcement officer, who has knowledge of an individual who is subject to inpatient commitment according to the criteria of G.S. 122C-261(a) and who requires immediate hospitalization to prevent harm to self or others, may transport the individual directly to an area facility or other place, including a State facility for the mentally ill, for examination by a physician or eligible psychologist in accordance with G.S. 122C-263(c).
- (b) Upon examination by the physician or eligible psychologist, if the individual meets the criteria required in G.S. 122C-261(a), the physician or eligible psychologist shall so certify in writing before any official authorized to administer oaths. The certificate shall also state the reason that the individual requires immediate hospitalization. If the physician or eligible psychologist knows or has reason to believe that the individual is mentally retarded, the certificate shall so state.
- (c) If the physician or eligible psychologist executes the oath, appearance before a magistrate shall be waived. The physician or eligible psychologist shall send a copy of the certificate to the clerk of superior court by the most reliable and expeditious means. If it cannot be reasonably anticipated that the clerk will receive the copy within 24 hours, excluding Saturday, Sunday, and holidays, of the time that it was signed, the physician or eligible psychologist shall also communicate the findings to the clerk by telephone.
- (d) Anyone, including a law enforcement officer if necessary, may transport the individual to a 24-hour facility described in G.S. 122C-252 for examination and treatment pending a district court hearing. If there is no area 24-hour facility and if the respondent is indigent and unable to pay for care at a private 24-hour facility, the law enforcement officer or other designated person providing transportation shall take the respondent to a State facility for the mentally ill designated by the Commission in accordance with G.S. 143B-147(a)(1)a and immediately notify the clerk of superior court of this action. The physician's or eligible psychologist's certificate shall serve as the custody order and the law enforcement officer or other designated person shall provide transportation in accordance with the provisions of G.S. 122C-251.

In the event an individual known or reasonably believed to be mentally retarded is transported to a State facility for the mentally ill, in no event shall that individual be admitted to that facility except as follows:

- (1) Persons described in G.S. 122C-266(b);
- (2) Persons admitted pursuant to G.S. 15A-1321;
- (3) Respondents who are so extremely dangerous as to pose a serious threat to the community and to other patients committed to non-State hospital psychiatric inpatient units, as determined by the Director of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services or his designee; and
- (4) Respondents who are so gravely disabled by both multiple disorders and medical fragility or multiple disorders and deafness that alternative care is inappropriate, as determined by the Director of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services or his designee.

Individuals transported to a State facility for the mentally ill who are not admitted by the facility may be transported by law enforcement officers or designated staff of the State facility in State-owned vehicles to an appropriate 24-hour facility that provides psychiatric inpatient care.

No later than 24 hours after the transfer, the responsible professional at the original facility shall notify the petitioner, the clerk of court, and, if consent is granted by the respondent, the next of kin, that the transfer has been completed.

(e) Respondents received at a 24-hour facility under the provisions of this section shall be examined by a second physician in accordance with G.S. 122C-266. After receipt of notification that the district court has determined reasonable grounds for the commitment, further proceedings shall be carried out in the same way as for all other respondents under this Part. (1973, c. 726, s. 1; c. 1408, s. 1; 1985, c. 589, s. 2; c. 695, s. 2; 1987, c. 596, s. 1; 1995 (Reg. Sess., 1996), c. 739, s. 7.)

## § 122C-263. Duties of law-enforcement officer; first examination by physician or eligible psychologist.

- (a) Without unnecessary delay after assuming custody, the law enforcement officer or the individual designated by the clerk or magistrate under G.S. 122C-251(g) to provide transportation shall take the respondent to an area facility for examination by a physician or eligible psychologist; if a physician or eligible psychologist is not available in the area facility, the person designated to provide transportation shall take the respondent to any physician or eligible psychologist locally available. If a physician or eligible psychologist is not immediately available, the respondent may be temporarily detained in an area facility, if one is available; if an area facility is not available, the respondent may be detained under appropriate supervision in the respondent's home, in a private hospital or a clinic, in a general hospital, or in a State facility for the mentally ill, but not in a jail or other penal facility.
  - (b) The examination set forth in subsection (a) of this section is not required if:
    - (1) The affiant who obtained the custody order is a physician or eligible psychologist who recommends inpatient commitment;
    - (2) The custody order states that the respondent was charged with a violent crime, including a crime involving assault with a deadly weapon, and he was found incapable of proceeding; or
    - (3) Repealed by Session Laws 1987, c. 596, s. 3.

In any of these cases, the law-enforcement officer shall take the respondent directly to a 24-hour facility described in G.S. 122C-252.

The physician or eligible psychologist described in subsection (a) of this section shall examine the respondent as soon as possible, and in any event within 24 hours, after the respondent is presented for examination. When the examination set forth in subsection (a) of this section is performed by a physician or eligible psychologist the respondent may either be in the physical face-to-face presence of the physician or eligible psychologist or may be examined utilizing telemedicine equipment and procedures. A physician or eligible psychologist who examines a respondent by means of telemedicine must be satisfied to a reasonable medical certainty that the determinations made in accordance with subsection (d) of this section would not be different if the examination had been done in the physical presence of the physician or eligible psychologist. A physician or eligible psychologist who is not so satisfied must note that the examination was not satisfactorily accomplished, and the respondent must be taken for a face-to-face examination in the physical presence of a person authorized to perform examinations under this section. As used in this subsection, "telemedicine" is the use of two-way real-time interactive audio and video between places of lesser and greater medical capability or expertise to provide and support health care when distance separates participants who are in different geographical locations. A recipient is referred by one provider to receive the services of another provider via telemedicine.

The examination shall include but is not limited to an assessment of the respondent's:

- (1) Current and previous mental illness and mental retardation including, if available, previous treatment history;
- (2) Dangerousness to self, as defined in G.S. 122C-3(11)a. or others, as defined in G.S. 122C-3(11)b.;
- (3) Ability to survive safely without inpatient commitment, including the availability of supervision from family, friends or others; and
- (4) Capacity to make an informed decision concerning treatment.
- (d) After the conclusion of the examination the physician or eligible psychologist shall make the following determinations:
  - (1) If the physician or eligible psychologist finds that:
    - a. The respondent is mentally ill;
    - b. The respondent is capable of surviving safely in the community with available supervision from family, friends, or others;
    - c. Based on the respondent's psychiatric history, the respondent is in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness as defined by G.S. 122C-3(11); and
    - d. The respondent's current mental status or the nature of the respondent's illness limits or negates the respondent's ability to make an informed decision to seek voluntarily or comply with recommended treatment.

The physician or eligible psychologist shall so show on the examination report and shall recommend outpatient commitment. In addition the examining physician or eligible psychologist shall show the name, address, and telephone number of the proposed outpatient treatment physician or center. The person designated in the order to provide transportation shall return the respondent to the respondent's regular residence or, with the respondent's consent, to the

- home of a consenting individual located in the originating county, and the respondent shall be released from custody.
- (2) If the physician or eligible psychologist finds that the respondent is mentally ill and is dangerous to self, as defined in G.S. 122C-3(11)a., or others, as defined in G.S. 122C-3(11)b., the physician or eligible psychologist shall recommend inpatient commitment, and shall so show on the examination report. If, in addition to mental illness and dangerousness, the physician or eligible psychologist also finds that the respondent is known or reasonably believed to be mentally retarded, this finding shall be shown on the report. The law enforcement officer or other designated person shall take the respondent to a 24-hour facility described in G.S. 122C-252 pending a district court hearing. If there is no area 24-hour facility and if the respondent is indigent and unable to pay for care at a private 24-hour facility, the law enforcement officer or other designated person shall take the respondent to a State facility for the mentally ill designated by the Commission in accordance with G.S. 143B-147(a)(1)a. for custody, observation, and treatment and immediately notify the clerk of superior court of this action. If a 24-hour facility is not immediately available or appropriate to the respondent's medical condition, the respondent may be temporarily detained under appropriate supervision at the site of the first examination, provided that at anytime that a physician or eligible psychologist determines that the respondent is no longer in need of inpatient commitment, the proceedings shall be terminated and the respondent transported and released in accordance with subdivision (3) of this subsection. However, if the physician or eligible psychologist determines that the respondent meets the criteria for outpatient commitment, as defined in subdivision (1) of this subsection, the physician or eligible psychologist may recommend outpatient commitment, and the respondent shall be transported and released in accordance with subdivision (1) of this subsection. Any decision to terminate the proceedings or to recommend outpatient commitment after an initial recommendation of inpatient commitment shall be documented and reported to the clerk of superior court in accordance with subsection (e) of this section. If the respondent is temporarily detained and a 24-hour facility is not available or medically appropriate seven days after the issuance of the custody order, a physician or psychologist shall report this fact to the clerk of superior court and the proceedings shall be terminated. Termination of proceedings pursuant to this subdivision shall not prohibit or prevent the initiation of new involuntary commitment proceedings when appropriate. Affidavits filed in support of proceedings terminated pursuant to this subdivision may not be submitted in support of any subsequent petitions for involuntary commitment. If the affiant initiating new commitment proceedings is a physician or eligible psychologist, the affiant shall conduct a new examination and may not rely upon examinations conducted as part of proceedings terminated pursuant to this subdivision.

In the event an individual known or reasonably believed to be mentally retarded is transported to a State facility for the mentally ill, in no event shall that individual be admitted to that facility except as follows:

- a. Persons described in G.S. 122C-266(b);
- b. Persons admitted pursuant to G.S. 15A-1321;
- c. Respondents who are so extremely dangerous as to pose a serious threat to the community and to other patients committed to non-State hospital psychiatric inpatient units, as determined by the Director of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services or his designee; and
- d. Respondents who are so gravely disabled by both multiple disorders and medical fragility or multiple disorders and deafness that alternative care is inappropriate, as determined by the Director of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services or his designee.

Individuals transported to a State facility for the mentally ill who are not admitted by the facility may be transported by law enforcement officers or designated staff of the State facility in State-owned vehicles to an appropriate 24-hour facility that provides psychiatric inpatient care.

No later than 24 hours after the transfer, the responsible professional at the original facility shall notify the petitioner, the clerk of court, and, if consent is granted by the respondent, the next of kin, that the transfer has been completed.

- (3) If the physician or eligible psychologist finds that neither condition described in subdivisions (1) or (2) of this subsection exists, the proceedings shall be terminated. The person designated in the order to provide transportation shall return the respondent to the respondent's regular residence or, with the respondent's consent, to the home of a consenting individual located in the originating county and the respondent shall be released from custody.
- (e) The findings of the physician or eligible psychologist and the facts on which they are based shall be in writing in all cases. The physician or eligible psychologist shall send a copy of the findings to the clerk of superior court by the most reliable and expeditious means. If it cannot be reasonably anticipated that the clerk will receive the copy within 48 hours of the time that it was signed, the physician or eligible psychologist shall also communicate his findings to the clerk by telephone.
- (f) When outpatient commitment is recommended, the examining physician or eligible psychologist, if different from the proposed outpatient treatment physician or center, shall give the respondent a written notice listing the name, address, and telephone number of the proposed outpatient treatment physician or center and directing the respondent to appear at the address at a specified date and time. The examining physician or eligible psychologist before the appointment shall notify by telephone the designated outpatient treatment physician or center and shall send a copy of the notice and his examination report to the physician or center.
- (g) The physician or eligible psychologist, at the completion of the examination, shall provide the respondent with specific information regarding the next steps that will occur. (1973, c. 726, s. 1; c. 1408, s. 1; 1977, c. 400, s. 4; c. 679, s. 8; c. 739, s. 1; 1979, c. 358, s. 27; c. 915, s. 4; 1983, c. 380, ss. 4, 10; c. 638, ss. 6, 7, 25.1; c. 864, s. 4; 1985, c. 589, s. 2; c. 695, ss. 2, 5, 6; 1985 (Reg. Sess., 1986), c. 863, s. 18; 1987, c. 596, s. 3; 1989, c. 225, s. 2; c. 770, s. 74; 1989 (Reg. Sess., 1990), c. 823, ss. 3, 4; 1991, c. 37, s. 8; c. 636, s. 2(1); c. 761, s. 49; 1995 (Reg. Sess., 1996), c. 739, s. 8(a)-(d); 2009-315, s. 2; 2009-340, s. 2.)

#### § 122C-264. Duties of clerk of superior court and the district attorney.

- (a) Upon receipt of a physician's or eligible psychologist's finding that the respondent meets the criteria of G.S. 122C-263(d)(1) and that outpatient commitment is recommended, the clerk of superior court of the county where the petition was initiated, upon direction of a district court judge, shall calendar the matter for hearing and shall notify the respondent, the proposed outpatient treatment physician or center, and the petitioner of the time and place of the hearing. The petitioner may file a written waiver of his right to notice under this subsection with the clerk of court.
- (b) Upon receipt of a physician's or eligible psychologist's finding that a respondent meets the criteria of G.S. 122C-263(d)(2) and that inpatient commitment is recommended, the clerk of superior court of the county where the 24-hour facility is located shall, after determination required by G.S. 122C-261(c) and upon direction of a district court judge, assign counsel if necessary, calendar the matter for hearing, and notify the respondent, his counsel, and the petitioner of the time and place of the hearing. The petitioner may file a written waiver of his right to notice under this subsection with the clerk of court.
- (b1) Upon receipt of a physician's or eligible psychologist's certificate that a respondent meets the criteria of G.S. 122C-261(a) and that immediate hospitalization is needed pursuant to G.S. 122C-262, the clerk of superior court of the county where the treatment facility is located shall submit the certificate to the Chief District Court Judge. The court shall review the certificate within 24 hours, excluding Saturday, Sunday, and holidays, for a finding of reasonable grounds in accordance with 122C-261(b). The clerk shall notify the treatment facility of the court's findings by telephone and shall proceed as set forth in subsections (b), (c), and (f) of this section.
- (c) Notice to the respondent, required by subsections (a) and (b) of this section, shall be given as provided in G.S. 1A-1, Rule 4(j) at least 72 hours before the hearing. Notice to other individuals shall be sent at least 72 hours before the hearing by first-class mail postage prepaid to the individual's last known address. G.S. 1A-1, Rule 6 shall not apply.
- (d) In cases described in G.S. 122C-266(b) in addition to notice required in subsections (a) and (b) of this section, the clerk of superior court shall notify the chief district judge and the district attorney in the county in which the defendant was found incapable of proceeding. The notice shall be given in the same way as the notice required by subsection (c) of this section. The judge or the district attorney may file a written waiver of his right to notice under this subsection with the clerk of court.
- (d1) For hearings and rehearings pursuant to G.S. 122C-268.1 and G.S. 122C-276.1, the clerk of superior court shall calendar the hearing or rehearing and shall notify the respondent, his counsel, counsel for the State, and the district attorney involved in the original trial. The notice shall be given in the same manner as the notice required by subsection (c) of this section. Upon receipt of the notice, the district attorney shall notify any persons he deems appropriate, including anyone who has filed with his office a written request for notification of any hearing or rehearing concerning discharge or conditional release of a respondent. Notice sent by the district attorney shall be by first-class mail to the person's last known address.
- (e) The clerk of superior court of the county where outpatient commitment is to be supervised shall keep a separate list regarding outpatient commitment and shall prepare quarterly reports listing all active cases, the assigned supervisor, and the disposition of all hearings, supplemental hearings, and rehearings.

(f) The clerk of superior court of the county where inpatient commitment hearings and rehearings are held shall provide all notices, send all records and maintain a record of all proceedings as required by this Part; provided that if the respondent has been committed to a 24-hour facility in a county other than his county of residence and the district court hearing is held in the county of the facility, the clerk of superior court in the county of the facility shall forward the record of the proceedings to the clerk of superior court in the county of respondent's residence, where they shall be maintained by receiving clerk. (1973, c. 1408, s. 1; 1977, c. 400, s. 5; c. 414, s. 1; 1979, c. 915, s. 5; 1983, c. 380, s. 9; c. 638, ss. 8, 16; c. 864, s. 4; 1985, c. 589, s. 2; c. 695, s. 7; 1985 (Reg. Sess., 1986), c. 863, s. 19; 1987, c. 596, s. 2; 1991, c. 37, s. 4; 1995 (Reg. Sess., 1996), c. 739, s. 9.)

#### § 122C-265. Outpatient commitment; examination and treatment pending hearing.

- (a) If a respondent, who has been recommended for outpatient commitment by an examining physician or eligible psychologist different from the proposed outpatient treatment physician or center, fails to appear for examination by the proposed outpatient treatment physician or center at the designated time, the physician or center shall notify the clerk of superior court who shall issue an order to a law-enforcement officer or other person authorized under G.S. 122C-251 to take the respondent into custody and take him immediately to the outpatient treatment physician or center for evaluation. The custody order is valid throughout the State. The law-enforcement officer may wait during the examination and return the respondent to his home after the examination.
- (b) The examining physician or the proposed outpatient treatment physician or center may prescribe to the respondent reasonable and appropriate medication and treatment that are consistent with accepted medical standards pending the district court hearing.
- (c) In no event may a respondent released on a recommendation that he meets the outpatient commitment criteria be physically forced to take medication or forceably detained for treatment pending a district court hearing.
- (d) If at any time pending the district court hearing the outpatient treatment physician or center determines that the respondent does not meet the criteria of G.S. 122C-263(d)(1), he shall release the respondent and notify the clerk of court and the proceedings shall be terminated.
- (e) If a respondent becomes dangerous to himself, as defined in G.S. 122C-3(11)a., or others, as defined in G.S. 122C-3(11)b., pending a district court hearing on outpatient commitment, new proceedings for involuntary inpatient commitment may be initiated.
- (f) If an inpatient commitment proceeding is initiated pending the hearing for outpatient commitment and the respondent is admitted to a 24-hour facility to be held for an inpatient commitment hearing, notice shall be sent by the clerk of court in the county where the respondent is being held to the clerk of court of the county where the outpatient commitment was initiated and the outpatient commitment proceeding shall be terminated. (1983, c. 638, s. 11; c. 864, s. 4; 1985, c. 589, s. 2; c. 695, s. 6; 1989 (Reg. Sess., 1990), c. 823, s. 5; 1991, c. 636, s. 2(2); c. 761, s. 49; 2004-23, s. 2(a).)

#### § 122C-266. Inpatient commitment; second examination and treatment pending hearing.

(a) Except as provided in subsections (b) and (e), within 24 hours of arrival at a 24-hour facility described in G.S. 122C-252, the respondent shall be examined by a physician. This physician shall not be the same physician who completed the certificate or examination under the

provisions of G.S. 122C-262 or G.S. 122C-263. The examination shall include but is not limited to the assessment specified in G.S. 122C-263(c).

- (1) If the physician finds that the respondent is mentally ill and is dangerous to self, as defined by G.S. 122C-3(11)a., or others, as defined by G.S. 122C-3(11)b., the physician shall hold the respondent at the facility pending the district court hearing.
- (2) If the physician finds that the respondent meets the criteria for outpatient commitment under G.S. 122C-263(d)(1), the physician shall show these findings on the physician's examination report, release the respondent pending the district court hearing, and notify the clerk of superior court of the county where the petition was initiated of these findings. In addition, the examining physician shall show on the examination report the name, address, and telephone number of the proposed outpatient treatment physician or center. The physician shall give the respondent a written notice listing the name, address, and telephone number of the proposed outpatient treatment physician or center and directing the respondent to appear at that address at a specified date and time. The examining physician before the appointment shall notify by telephone and shall send a copy of the notice and the examination report to the proposed outpatient treatment physician or center.
- (3) If the physician finds that the respondent does not meet the criteria for commitment under either G.S. 122C-263(d)(1) or G.S. 122C-263(d)(2), the physician shall release the respondent and the proceedings shall be terminated.
- (4) If the respondent is released under subdivisions (2) or (3) of this subsection, the law enforcement officer or other person designated to provide transportation shall return the respondent to the respondent's residence in the originating county or, if requested by the respondent, to another location in the originating county.
- (b) If the custody order states that the respondent was charged with a violent crime, including a crime involving assault with a deadly weapon, and that he was found incapable of proceeding, the physician shall examine him as set forth in subsection (a) of this section. However, the physician may not release him from the facility until ordered to do so following the district court hearing.
- (c) The findings of the physician and the facts on which they are based shall be in writing, in all cases. A copy of the findings shall be sent to the clerk of superior court by reliable and expeditious means.
- (d) Pending the district court hearing, the physician attending the respondent may administer to the respondent reasonable and appropriate medication and treatment that is consistent with accepted medical standards. Except as provided in subsection (b) of this section, if at any time pending the district court hearing, the attending physician determines that the respondent no longer meets the criteria of either G.S. 122C-263(d)(1) or (d)(2), he shall release the respondent and notify the clerk of court and the proceedings shall be terminated.
- (e) If the 24-hour facility described in G.S. 122C-252 or G.S. 122C-262 is the facility in which the first examination by a physician or eligible psychologist occurred and is the same facility in which the respondent is held, the second examination shall occur not later than the following regular working day. (1973, c. 726, s. 1; c. 1408, s. 1; 1977, c. 400, s. 6; 1979, c. 915, s. 6; 1983, c. 380, s. 5; c. 638, ss. 9, 10; c. 864, s. 4; 1985, c. 589, s. 2; c. 695, s. 2; 1987, c. 596.

s. 4; 1989 (Reg. Sess., 1990), c. 823, s. 6; 1991, c. 37, s. 9; 1995 (Reg. Sess., 1996), c. 739, s. 10(a), (b).)

#### § 122C-267. Outpatient commitment; district court hearing.

- (a) A hearing shall be held in district court within 10 days of the day the respondent is taken into custody pursuant to G.S. 122C-261(e). Upon its own motion or upon motion of the proposed outpatient treatment physician or the respondent, the court may grant a continuance of not more than five days.
- (b) The respondent shall be present at the hearing. A subpoena may be issued to compel the respondent's presence at a hearing. The petitioner and the proposed outpatient treatment physician or his designee may be present and may provide testimony.
- (c) Certified copies of reports and findings of physicians and psychologists and medical records of previous and current treatment are admissible in evidence.
- (d) At the hearing to determine the necessity and appropriateness of outpatient commitment, the respondent need not, but may, be represented by counsel. However, if the court determines that the legal or factual issues raised are of such complexity that the assistance of counsel is necessary for an adequate presentation of the merits or that the respondent is unable to speak for himself, the court may continue the case for not more than five days and order the appointment of counsel for an indigent respondent. Appointment of counsel shall be in accordance with rules adopted by the Office of Indigent Defense Services.
- (e) Hearings may be held at the area facility in which the respondent is being treated, if it is located within the judge's district court district as defined in G.S. 7A-133, or in the judge's chambers. A hearing may not be held in a regular courtroom, over objection of the respondent, if in the discretion of a judge a more suitable place is available.
  - (f) The hearing shall be closed to the public unless the respondent requests otherwise.
- (g) A copy of all documents admitted into evidence and a transcript of the proceedings shall be furnished to the respondent on request by the clerk upon the direction of a district court judge. If the client is indigent, the copies shall be provided at State expense.
- (h) To support an outpatient commitment order, the court is required to find by clear, cogent, and convincing evidence that the respondent meets the criteria specified in G.S. 122C-263(d)(1). The court shall record the facts which support its findings and shall show on the order the center or physician who is responsible for the management and supervision of the respondent's outpatient commitment. (1973, c. 726, s. 1; c. 1408, s. 1; 1975, cc. 322, 459; 1977, c. 400, s. 7; c. 1126, s. 1; 1979, c. 915, ss. 7, 13; 1983, c. 380, s. 6; c. 638, ss. 12, 13; c. 864, s. 4; 1985, c. 589, s. 2; c. 695, s. 8; 1987, c. 282, s. 18; 1987 (Reg. Sess., 1988), c. 1037, s. 113.1; 2000-144, s. 38.)

#### § 122C-268. Inpatient commitment; district court hearing.

- (a) A hearing shall be held in district court within 10 days of the day the respondent is taken into law enforcement custody pursuant to G.S. 122C-261(e) or G.S. 122C-262. A continuance of not more than five days may be granted upon motion of:
  - (1) The court;
  - (2) Respondent's counsel; or
  - (3) The State, sufficiently in advance to avoid movement of the respondent.
- (b) The attorney, who is a member of the staff of the Attorney General assigned to one of the State's facilities for the mentally ill or the psychiatric service of the University of North

Carolina Hospitals at Chapel Hill, shall represent the State's interest at commitment hearings, rehearings, and supplemental hearings held for respondents admitted pursuant to this Part or G.S. 15A-1321 at the facility to which he is assigned.

In addition, the Attorney General may, in his discretion, designate an attorney who is a member of his staff to represent the State's interest at any commitment hearing, rehearing, or supplemental hearing held in a place other than at one of the State's facilities for the mentally ill or the psychiatric service of the University of North Carolina Hospitals at Chapel Hill.

- (c) If the respondent's custody order indicates that he was charged with a violent crime, including a crime involving an assault with a deadly weapon, and that he was found incapable of proceeding, the clerk shall give notice of the time and place of the hearing as provided in G.S. 122C-264(d). The district attorney in the county in which the respondent was found incapable of proceeding may represent the State's interest at the hearing.
- (d) The respondent shall be represented by counsel of his choice; or if he is indigent within the meaning of G.S. 7A-450 or refuses to retain counsel if financially able to do so, he shall be represented by counsel appointed in accordance with rules adopted by the Office of Indigent Defense Services.
- (e) With the consent of the court, counsel may in writing waive the presence of the respondent.
- (f) Certified copies of reports and findings of physicians and psychologists and previous and current medical records are admissible in evidence, but the respondent's right to confront and cross-examine witnesses may not be denied.
- (g) Hearings may be held in an appropriate room not used for treatment of clients at the facility in which the respondent is being treated if it is located within the judge's district court district as defined in G.S. 7A-133 or in the judge's chambers. A hearing may not be held in a regular courtroom, over objection of the respondent, if in the discretion of a judge a more suitable place is available.
  - (h) The hearing shall be closed to the public unless the respondent requests otherwise.
- (i) A copy of all documents admitted into evidence and a transcript of the proceedings shall be furnished to the respondent on request by the clerk upon the direction of a district court judge. If the respondent is indigent, the copies shall be provided at State expense.
- (j) To support an inpatient commitment order, the court shall find by clear, cogent, and convincing evidence that the respondent is mentally ill and dangerous to self, as defined in G.S. 122C-3(11)a., or dangerous to others, as defined in G.S. 122C-3(11)b. The court shall record the facts that support its findings. (1985, c. 589, s. 2; c. 695, s. 8; 1985 (Reg. Sess., 1986), c. 1014, s. 195(b); 1987 (Reg. Sess., 1988), c. 1037, s. 114; 1989, c. 141, s. 11; 1989 (Reg. Sess., 1990), c. 823, s. 7; 1991, c. 37, s. 10; c. 257, s. 2; 1995 (Reg. Sess., 1996), c. 739, s. 11(a), (b); 2000-144, s. 39.)

#### § 122C-268.1. Inpatient commitment; hearing following automatic commitment.

- (a) A respondent who is committed pursuant to G.S. 15A-1321 shall be provided a hearing, unless waived, before the expiration of 50 days from the date of his commitment.
- (b) The district attorney in the county in which the respondent was found not guilty by reason of insanity may represent the State's interest at the hearing, rehearings, and supplemental rehearings. Notwithstanding the provisions of G.S. 122C-269, if the district attorney elects to represent the State's interest, upon motion of the district attorney, the venue for the hearing, rehearings, and supplemental rehearings shall be the county in which the respondent was found

- not guilty by reason of insanity. If the district attorney declines to represent the State's interest, then the representation shall be determined as follows. An attorney, who is a member of the staff of the Attorney General assigned to one of the State's facilities for the mentally ill or the psychiatric service of the University of North Carolina Hospitals at Chapel Hill, may represent the State's interest at commitment hearings, rehearings, and supplemental hearings. Alternatively, the Attorney General may, in his discretion, designate an attorney who is a member of his staff to represent the State's interest at any commitment hearing, rehearing, or supplemental hearing.
- (c) The clerk shall give notice of the time and place of the hearing as provided in G.S. 122C-264(d1).
- (d) The respondent shall be represented by counsel of his choice, or if he is indigent within the meaning of G.S. 7A-450 or refuses to retain counsel if financially able to do so, he shall be represented by counsel appointed in accordance with rules adopted by the Office of Indigent Defense Services.
- (e) With the consent of the court, counsel may in writing waive the presence of the respondent.
- (f) Certified copies of reports and findings of physicians and psychologists and previous and current medical records are admissible in evidence, but the respondent's right to confront and cross-examine witnesses may not be denied.
- (g) The hearing shall take place in the trial division in which the original trial was held. The hearing shall be open to the public. For purposes of this subsection, "trial division" means either the superior court division or the district court division of the General Court of Justice.
- (h) A copy of all documents admitted into evidence and a transcript of the proceedings shall be furnished to the respondent on request by the clerk upon the direction of the presiding judge. If the respondent is indigent, the copies shall be provided at State expense.
- (i) The respondent shall bear the burden to prove by a preponderance of the evidence that he (i) no longer has a mental illness as defined in G.S. 122C-3(21), or (ii) is no longer dangerous to others as defined in G.S. 122C-3(11)b. If the court is so satisfied, then the court shall order the respondent discharged and released. If the court finds that the respondent has not met his burden of proof, then the court shall order that inpatient commitment continue at a 24-hour facility designated pursuant to G.S. 122C-252 for a period not to exceed 90 days. The court shall make a written record of the facts that support its findings.
- (j) Nothing in this section shall limit the respondent's right to habeas corpus relief. (1991, c. 37, s. 2; 1991 (Reg. Sess., 1992), c. 1034, ss. 2, 3; 1995, c. 140, s. 1; 2000-144, s. 40.)

#### § 122C-269. Venue of hearing when respondent held at a 24-hour facility pending hearing.

- (a) In all cases where the respondent is held at a 24-hour facility pending hearing as provided in G.S. 122C-268, G.S. 122C-268.1, 122C-276.1, or 122C-277(b1), unless the respondent through counsel objects to the venue, the hearing shall be held in the county in which the facility is located. Upon objection to venue, the hearing shall be held in the county where the petition was initiated, except as otherwise provided in subsection (c) of this section.
- (b) An official of the facility shall immediately notify the clerk of superior court of the county in which the facility is located of a determination to hold the respondent pending hearing. That clerk shall request transmittal of all documents pertinent to the proceedings from the clerk of superior court where the proceedings were initiated. The requesting clerk shall assume all

duties set forth in G.S. 122C-264. The counsel provided for in G.S. 122C-268(d) shall be appointed in accordance with rules adopted by the Office of Indigent Defense Services.

(c) Upon motion of any interested person, the venue of an initial hearing described in G.S. 122C-268(c) or G.S. 122C-268.1 or a rehearing required by G.S. 122C-276(b), G.S. 122C-276.1, or subsections (b) or (b1) of G.S. 122C-277 shall be moved to the county in which the respondent was found not guilty by reason of insanity or incapable of proceeding when the convenience of witnesses and the ends of justice would be promoted by the change. (1975, 2nd Sess., c. 983, s. 133; 1981, c. 537, s. 6; 1983, c. 380, s. 7; 1985, c. 589, s. 2; 1991, c. 37, ss. 11, 12; 1995, c. 140, s. 2; 2000-144, s. 41; 2001-487, s. 29.)

#### § 122C-270. Attorneys to represent the respondent and the State.

- (a) In a superior court district or set of districts as defined in G.S. 7A-41.1 in which a State facility for the mentally ill is located, the Commission on Indigent Defense Services shall appoint an attorney licensed to practice in North Carolina as special counsel for indigent respondents who are mentally ill. These special counsel shall serve at the pleasure of the Commission, may not privately practice law, and shall receive annual compensation within the salary range for assistant public defenders as fixed by the Office of Indigent Defense Services. The special counsel shall represent all indigent respondents at all hearings, rehearings, and supplemental hearings held at the State facility. Special counsel shall determine indigency in accordance with G.S. 7A-450(a). Indigency is subject to redetermination by the presiding judge. If the respondent appeals, counsel for the appeal shall be appointed in accordance with rules adopted by the Office of Indigent Defense Services.
- (b) The State facility shall provide suitable office space for the counsel to meet privately with respondents. The Office of Indigent Defense Services shall provide secretarial and clerical service and necessary equipment and supplies for the office.
- (c) In the event of a vacancy in the office of special counsel, counsel's incapacity, or a conflict of interest, counsel for indigents at hearings or rehearings may be assigned in accordance with rules adopted by the Office of Indigent Defense Services. No mileage or compensation for travel time is paid to a counsel appointed pursuant to this subsection. Counsel may also be so assigned when, in the opinion of the Director of the Office of Indigent Defense Services, the volume of cases warrants.
- (d) At hearings held in counties other than those designated in subsection (a) of this section, counsel for indigent respondents shall be appointed in accordance with rules adopted by the Office of Indigent Defense Services.
- (e) If the respondent is committed to a non-State 24-hour facility, assigned counsel remains responsible for the respondent's representation at the trial level until discharged by order of district court, until the respondent is unconditionally discharged from the facility, or until the respondent voluntarily admits himself or herself to the facility. If the respondent is transferred to a State facility for the mentally ill, assigned counsel is discharged. If the respondent appeals, counsel for the appeal shall be appointed in accordance with rules adopted by the Office of Indigent Defense Services.
- (f) The Attorney General may employ four attorneys, one to be assigned by him full-time to each of the State facilities for the mentally ill, to represent the State's interest at commitment hearings, rehearings and supplemental hearings held under this Article at the State facilities for respondents admitted to those facilities pursuant to Part 3, 4, 7, or 8 of this Article or G.S. 15A-1321 and to provide liaison and consultation services concerning these matters. These

attorneys are subject to Chapter 126 of the General Statutes and shall also perform additional duties as may be assigned by the Attorney General. The attorney employed by the Attorney General in accordance with G.S. 114-4.2B shall represent the State's interest at commitment hearings, rehearings and supplemental hearings held for respondents admitted to the University of North Carolina Hospitals at Chapel Hill pursuant to Part 3, 4, 7, or 8 of this Article or G.S. 15A-1321. (1973, c. 47, s. 2; c. 1408, s. 1; 1977, c. 400, s. 11; 1979, c. 915, s. 12; 1983, c. 275, ss. 1, 2; 1985, c. 589, s. 2; 1987 (Reg. Sess., 1988), c. 1037, s. 115; 1989, c. 141, s. 12; 1991, c. 257, s. 1; 1995 (Reg. Sess., 1996), c. 739, s. 12(a); 2000-144, s. 42; 2006-264, s. 61(a).)

#### § 122C-271. Disposition.

- (a) If an examining physician or eligible psychologist has recommended outpatient commitment and the respondent has been released pending the district court hearing, the court may make one of the following dispositions:
  - If the court finds by clear, cogent, and convincing evidence that the respondent is mentally ill; that he is capable of surviving safely in the community with available supervision from family, friends, or others; that based on respondent's treatment history, the respondent is in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness as defined in G.S. 122C-3(11); and that the respondent's current mental status or the nature of his illness limits or negates his ability to make an informed decision to seek voluntarily or comply with recommended treatment, it may order outpatient commitment for a period not in excess of 90 days.
  - (2) If the court does not find that the respondent meets the criteria of commitment set out in subdivision (1) of this subsection, the respondent shall be discharged and the facility at which he was last a client so notified.
- (b) If the respondent has been held in a 24-hour facility pending the district court hearing pursuant to G.S. 122C-268, the court may make one of the following dispositions:
  - (1) If the court finds by clear, cogent, and convincing evidence that the respondent is mentally ill; that the respondent is capable of surviving safely in the community with available supervision from family, friends, or others; that based on respondent's psychiatric history, the respondent is in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness as defined by G.S. 122C-3(11); and that the respondent's current mental status or the nature of the respondent's illness limits or negates the respondent's ability to make an informed decision voluntarily to seek or comply with recommended treatment, it may order outpatient commitment for a period not in excess of 90 days. If the commitment proceedings were initiated as the result of the respondent's being charged with a violent crime, including a crime involving an assault with a deadly weapon, and the respondent was found incapable of proceeding, the commitment order shall so show.
  - (2) If the court finds by clear, cogent, and convincing evidence that the respondent is mentally ill and is dangerous to self, as defined in G.S. 122C-3(11)a., or others, as defined in G.S. 122C-3(11)b., it may order inpatient commitment at a 24-hour facility described in G.S. 122C-252 for a

period not in excess of 90 days. However, no respondent found to be both mentally retarded and mentally ill may be committed to a State, area or private facility for the mentally retarded. An individual who is mentally ill and dangerous to self, as defined in G.S. 122C-3(11)a., or others, as defined in G.S. 122C-3(11)b., may also be committed to a combination of inpatient and outpatient commitment at both a 24-hour facility and an outpatient treatment physician or center for a period not in excess of 90 days. If the commitment proceedings were initiated as the result of the respondent's being charged with a violent crime, including a crime involving an assault with a deadly weapon, and the respondent was found incapable of proceeding, the commitment order shall so show. If the court orders inpatient commitment for a respondent who is under an outpatient commitment order, the outpatient commitment is terminated; and the clerk of the superior court of the county where the district court hearing is held shall send a notice of the inpatient commitment to the clerk of superior court where the outpatient commitment was being supervised.

- (3) If the court does not find that the respondent meets either of the commitment criteria set out in subdivisions (1) and (2) of this subsection, the respondent shall be discharged, and the facility in which the respondent was last a client so notified.
- Before ordering any outpatient commitment, the court shall make findings of (4) fact as to the availability of outpatient treatment. The court shall also show on the order the outpatient treatment physician or center who is to be responsible for the management and supervision of the respondent's outpatient commitment. When an outpatient commitment order is issued for a respondent held in a 24-hour facility, the court may order the respondent held at the facility for no more than 72 hours in order for the facility to notify the designated outpatient treatment physician or center of the treatment needs of the respondent. The clerk of court in the county where the facility is located shall send a copy of the outpatient commitment order to the designated outpatient treatment physician or center. If the outpatient commitment will be supervised in a county other than the county where the commitment originated, the court shall order venue for further court proceedings to be transferred to the county where the outpatient commitment will be supervised. Upon an order changing venue, the clerk of superior court in the county where the commitment originated shall transfer the file to the clerk of superior court in the county where the outpatient commitment is to be supervised.
- (c) If the respondent was found not guilty by reason of insanity and has been held in a 24-hour facility pending the court hearing held pursuant to G.S. 122C-268.1, the court may make one of the following dispositions:
  - (1) If the court finds that the respondent has not proved by a preponderance of the evidence that he no longer has a mental illness or that he is no longer dangerous to others, it shall order inpatient treatment at a 24-hour facility for a period not to exceed 90 days.
  - (2) If the court finds that the respondent has proven by a preponderance of the evidence that he no longer has a mental illness or that he is no longer

dangerous to others, the court shall order the respondent discharged and released. (1973, c. 726, s. 1; c. 1408, s. 1; 1977, c. 400, s. 8; c. 739, s. 2; 1979, c. 358, s. 26; c. 915, ss. 8, 15, 16; 1981, c. 537, s. 1; 1983, c. 380, s. 8; c. 638, s. 14; c. 864, s. 4; 1985, c. 589, s. 2; c. 695, s. 2; 1985 (Reg. Sess., 1986), c. 863, ss. 20-22; 1989, c. 225, s. 1; c. 770, s. 73; 1989 (Reg. Sess., 1990), c. 823, s. 8; 1991, c. 37, s. 13; 1991 (Reg. Sess., 1992), c. 1034, s. 5; 1995 (Reg. Sess., 1996), c. 739, s. 13.)

#### § 122C-272. Appeal.

Judgment of the district court is final. Appeal may be had to the Court of Appeals by the State or by any party on the record as in civil cases. Appeal does not stay the commitment unless so ordered by the Court of Appeals. The Attorney General represents the State's interest on appeal. The district court retains limited jurisdiction for the purpose of hearing all reviews, rehearings, or supplemental hearings allowed or required under this Part. (1973, c. 726, s. 1; c. 1408, s. 1; 1979, c. 915, s. 19; 1985, c. 589, s. 2; 2009-570, s. 27.)

#### § 122C-273. Duties for follow-up on commitment order.

- (a) Unless prohibited by Chapter 90 of the General Statutes, if the commitment order directs outpatient treatment, the outpatient treatment physician may prescribe or administer, or the center may administer, to the respondent reasonable and appropriate medication and treatment that are consistent with accepted medical standards.
  - (1) If the respondent fails to comply or clearly refuses to comply with all or part of the prescribed treatment, the physician, the physician's designee, or the center shall make all reasonable effort to solicit the respondent's compliance. These efforts shall be documented and reported to the court with a request for a supplemental hearing.
  - If the respondent fails to comply, but does not clearly refuse to comply, with (2) all or part of the prescribed treatment after reasonable effort to solicit the respondent's compliance, the physician, the physician's designee, or the center may request the court to order the respondent taken into custody for the purpose of examination. Upon receipt of this request, the clerk shall issue an order to a law-enforcement officer to take the respondent into custody and to take him immediately to the designated outpatient treatment physician or center for examination. The custody order is valid throughout the State. The law-enforcement officer shall turn the respondent over to the custody of the physician or center who shall conduct the examination and then release the respondent. The law-enforcement officer may wait during the examination and return the respondent to his home after the examination. An examination conducted under this subsection in which a physician or eligible psychologist determines that the respondent meets the criteria for inpatient commitment may be substituted for the first examination required by G.S. 122C-263 if the clerk or magistrate issues a custody order within six hours after the examination was performed.
  - (3) In no case may the respondent be physically forced to take medication or forcibly detained for treatment unless he poses an immediate danger to

- himself or others. In such cases inpatient commitment proceedings shall be initiated.
- (4) At any time that the outpatient treatment physician or center finds that the respondent no longer meets the criteria set out in G.S. 122C-263(d)(1), the physician or center shall so notify the court and the case shall be terminated; provided, however, if the respondent was initially committed as a result of conduct resulting in his being charged with a violent crime, including a crime involving an assault with a deadly weapon, and the respondent was found incapable of proceeding, the designated outpatient treatment physician or center shall notify the clerk that discharge is recommended. The clerk shall calendar a supplemental hearing as provided in G.S. 122C-274 to determine whether the respondent meets the criteria for outpatient commitment.
- (5) Any individual who has knowledge that a respondent on outpatient commitment has become dangerous to himself, as defined by G.S. 122C-3(11)a., and others, as defined in G.S. 122C-3(11)b., may initiate a new petition for inpatient commitment as provided in this Part. If the respondent is committed as an inpatient, the outpatient commitment shall be terminated and notice sent by the clerk of court in the county where the respondent is committed as an inpatient to the clerk of court of the county where the outpatient commitment is being supervised.
- (b) If the respondent on outpatient commitment intends to move or moves to another county within the State, the designated outpatient treatment physician or center shall request that the clerk of court in the county where the outpatient commitment is being supervised calendar a supplemental hearing.
- (c) If the respondent moves to another state or to an unknown location, the designated outpatient treatment physician or center shall notify the clerk of superior court of the county where the outpatient commitment is supervised and the outpatient commitment shall be terminated.
- (d) If the commitment order directs inpatient treatment, the physician attending the respondent may administer to the respondent reasonable and appropriate medication and treatment that are consistent with accepted medical standards. The attending physician shall release or discharge the respondent in accordance with G.S. 122C-277. (1983, c. 638, s. 16; c. 864, s. 4; 1985, c. 589, s. 2; 1985 (Reg. Sess., 1986), c. 863, ss. 23-26; 1989 (Reg. Sess., 1990), c. 823, s. 9; 1991, c. 37, s. 14; 2004-23, s. 2(b).)

#### § 122C-274. Supplemental hearings.

- (a) Upon receipt of a request for a supplemental hearing, the clerk shall calendar a hearing to be held within 14 days and notify, at least 72 hours before the hearing, the petitioner, the respondent, his attorney, if any, and the designated outpatient treatment physician or center. The respondent shall be notified at least 72 hours before the hearing by personally serving on him an order to appear. Other persons shall be notified as provided in G.S. 122C-264(c).
  - (b) The procedures for the hearing shall follow G.S. 122C-267.
- (c) In supplemental hearings for alleged noncompliance, the court shall determine whether the respondent has failed to comply and, if so, the causes for noncompliance. If the court determines that the respondent has failed or refused to comply it may:

- Upon finding probable cause to believe that the respondent is mentally ill and dangerous to himself, as defined in G.S. 122C-3(11)a., or others, as defined in G.S. 122C-3(11)b., order an examination by the same or different physician or eligible psychologist as provided in G.S. 122C-263(c) in order to determine the necessity for continued outpatient or inpatient commitment;
- (2) Reissue or change the outpatient commitment order in accordance with G.S. 122C-271; or
- (3) Discharge the respondent from the order and dismiss the case.
- At the supplemental hearing for a respondent who has moved or intends to move to (d) another county, the court shall determine if the respondent meets the criteria for outpatient commitment set out in G.S. 122C-263(d)(1). If the court determines that the respondent no longer meets the criteria for outpatient commitment, it shall discharge the respondent from the order and dismiss the case. If the court determines that the respondent continues to meet the criteria for outpatient commitment, it shall continue the outpatient commitment but shall designate a physician or center at the respondent's new residence to be responsible for the management or supervision of the respondent's outpatient commitment. The court shall order the respondent to appear for treatment at the address of the newly designated outpatient treatment physician or center and shall order venue for further court proceedings under the outpatient commitment to be transferred to the new county of supervision. Upon an order changing venue, the clerk of court in the county where the outpatient commitment has been supervised shall transfer the records regarding the outpatient commitment to the clerk of court in the county where the commitment will be supervised. Also, the clerk of court in the county where the outpatient commitment has been supervised shall send a copy of the court's order directing the continuation of outpatient treatment under new supervision to the newly designated outpatient treatment physician or center.
- (e) At any time during the term of an outpatient commitment order, a respondent may apply to the court for a supplemental hearing for the purpose of discharge from the order. The application shall be made in writing by the respondent to the clerk of superior court of the county where the outpatient commitment is being supervised. At the supplemental hearing the court shall determine whether the respondent continues to meet the criteria specified in G.S. 122C-263(d)(1). The court may either reissue or change the commitment order or discharge the respondent and dismiss the case.
- (f) At supplemental hearings requested pursuant to G.S. 122C-277(a) for transfer from inpatient to outpatient commitment, the court shall determine whether the respondent meets the criteria for either inpatient or outpatient commitment. If the court determines that the respondent continues to meet the criteria for inpatient commitment, it shall order the continuation of the original commitment order. If the court determines that the respondent meets the criteria for outpatient commitment, it shall order outpatient commitment for a period of time not in excess of 90 days. If the court finds that the respondent does not meet either criteria, the respondent shall be discharged and the case dismissed. (1983, c. 638, s. 17; c. 864, s. 4; 1985, c. 589, s. 2; c. 695, s. 2; 1989 (Reg. Sess., 1990), c. 823, s. 10.)

#### § 122C-275. Outpatient commitment; rehearings.

(a) Fifteen days before the end of the initial or subsequent periods of outpatient commitment if the outpatient treatment physician or center determines that the respondent continues to meet the criteria specified in G.S. 122C-263(d)(1), he shall so notify the clerk of

superior court of the county where the outpatient commitment is supervised. If the respondent no longer meets the criteria, the physician shall so notify the clerk who shall dismiss the case; provided, however, if the respondent was initially committed as a result of conduct resulting in his being charged with a violent crime, including a crime involving an assault with a deadly weapon, and the respondent was found incapable of proceeding, the physician or center shall notify the clerk that discharge is recommended. The clerk, at least 10 days before the end of the commitment period, on order of the district court, shall calendar the rehearing.

- (b) Notice and procedures of rehearings are governed by the same procedures as initial hearings, and the respondent has the same rights he had at the initial hearing including the right to appeal.
- (c) If the court finds that the respondent no longer meets the criteria of G.S. 122C-263(d)(1), it shall unconditionally discharge him. A copy of the discharge order shall be furnished by the clerk to the designated outpatient treatment physician or center. If the respondent continues to meet the criteria of G.S. 122C-263(d)(1), the court may order outpatient commitment for an additional period not in excess of 180 days. (1983, c. 638, s. 20; c. 864, s. 4; 1985, c. 589, s. 2; 1991, c. 37, s. 15.)

# § 122C-276. Inpatient commitment; rehearings for respondents other than insanity acquittees.

- (a) Fifteen days before the end of the initial inpatient commitment period if the attending physician determines that commitment of a respondent beyond the initial period will be necessary, he shall so notify the clerk of superior court of the county in which the facility is located. The clerk, at least 10 days before the end of the initial period, on order of a district court judge of the district court district as defined in G.S. 7A-133 in which the facility is located, shall calendar the rehearing. If the respondent was initially committed as the result of conduct resulting in his being charged with a violent crime, including a crime involving an assault with a deadly weapon, and respondent was found incapable of proceeding, the clerk shall also notify the chief district court judge, the clerk of superior court, and the district attorney in the county in which the respondent was found incapable of proceeding of the time and place of the hearing.
- (b) Fifteen days before the end of the initial treatment period of a respondent who was initially committed as a result of conduct resulting in his being charged with a violent crime, including a crime involving an assault with a deadly weapon, having been found incapable of proceeding, if the attending physician determines that commitment of the respondent beyond the initial period will not be necessary, he shall so notify the clerk of superior court who shall schedule a rehearing as provided in subsection (a) of this section.
- (c) Subject to the provisions of G.S. 122C-269(c), rehearings shall be held at the facility in which the respondent is receiving treatment. The judge is a judge of the district court of the district court district as defined in G.S. 7A-133 in which the facility is located or a district court judge temporarily assigned to that district.
- (d) Notice and proceedings of rehearings are governed by the same procedures as initial hearings and the respondent has the same rights he had at the initial hearing including the right to appeal.
- (e) At rehearings the court may make the same dispositions authorized in G.S. 122C-271(b) except a second commitment order may be for an additional period not in excess of 180 days.

- (f) Fifteen days before the end of the second commitment period and annually thereafter, the attending physician shall review and evaluate the condition of each respondent; and if he determines that a respondent is in continued need of inpatient commitment or, in the alternative, in need of outpatient commitment, or a combination of both, he shall so notify the respondent, his counsel, and the clerk of superior court of the county, in which the facility is located. Unless the respondent through his counsel files with the clerk a written waiver of his right to a rehearing, the clerk, on order of a district court judge of the district in which the facility is located, shall calendar a rehearing for not later than the end of the current commitment period. The procedures and standards for the rehearing are the same as for the first rehearing. No third or subsequent inpatient recommitment order shall be for a period longer than one year.
- (g) At any rehearings the court has the option to order outpatient commitment for a period not in excess of 180 days in accordance with the criteria specified in G.S. 122C-263(d)(1) and following the procedures as specified in this Article. (1973, c. 726, s. 1; c. 1408, s. 1; 1977, c. 400, s. 9; 1979, c. 915, ss. 9, 17; 1981, c. 537, ss. 2-4; 1983, c. 638, ss. 18, 19; c. 864, s. 4; 1985, c. 589, s. 2; 1987 (Reg. Sess., 1988), c. 1037, s. 116; 1991, c. 37, s. 5.)

# § 122C-276.1. Inpatient commitment; rehearings for respondents who are insanity acquittees.

- (a) At least 15 days before the end of any inpatient commitment period ordered pursuant to G.S. 122C-268.1, the clerk shall calendar the hearing and notify the parties as specified in G.S. 122C-264(d1), unless the hearing is waived by the respondent.
- (b) The proceedings of the rehearing shall be governed by the same procedures provided by G.S. 122C-268.1.
- (c) The respondent shall bear the burden to prove by a preponderance of the evidence that he (i) no longer has a mental illness as defined in G.S. 122C-3(21), or (ii) is no longer dangerous to others as defined in G.S. 122C-3(11)b. If the court is so satisfied, then the court shall order the respondent discharged and released. If the court finds that the respondent has not met his burden of proof, then the court shall order inpatient commitment be continued for a period not to exceed 180 days. The court shall make a written record of the facts that support its findings.
- (d) At least 15 days before the end of any commitment period ordered pursuant to subsection (c) of this section and annually thereafter, the clerk shall calendar the hearing and notify the parties as specified in G.S. 122C-264(d1). The procedures and standards for the rehearing are the same as under this section. No third or subsequent inpatient recommitment order shall be for a period longer than one year. (1991, c. 37, s. 3; 1991 (Reg. Sess., 1992), c. 1034, s. 4.)

#### § 122C-277. Release and conditional release; judicial review.

(a) Except as provided in subsections (b) and (b1) of this section, the attending physician shall discharge a committed respondent unconditionally at any time he determines that the respondent is no longer in need of inpatient commitment. However, if the attending physician determines that the respondent meets the criteria for outpatient commitment as defined in G.S. 122C-263(d)(1), he may request the clerk to calendar a supplemental hearing to determine whether an outpatient commitment order shall be issued. Except as provided in subsections (b) and (b1) of this section, the attending physician may also release a respondent conditionally for periods not in excess of 30 days on specified medically appropriate conditions. Violation of the

- conditions is grounds for return of the respondent to the releasing facility. A law-enforcement officer, on request of the attending physician, shall take a conditional releasee into custody and return him to the facility in accordance with G.S. 122C-205. Notice of discharge and of conditional release shall be furnished to the clerk of superior court of the county of commitment and of the county in which the facility is located.
- (b) If the respondent was initially committed as the result of conduct resulting in his being charged with a violent crime, including a crime involving an assault with a deadly weapon, and respondent was found incapable of proceeding, 15 days before the respondent's discharge or conditional release the attending physician shall notify the clerk of superior court of the county in which the facility is located of his determination regarding the proposed discharge or conditional release. The clerk shall then schedule a rehearing to determine the appropriateness of respondent's release under the standards of commitment set forth in G.S. 122C-271(b). The clerk shall give notice as provided in G.S. 122C-264(d). The district attorney of the district where respondent was found incapable of proceeding may represent the State's interest at the hearing.
- (b1) If the respondent was initially committed pursuant to G.S. 15A-1321, 15 days before the respondent's discharge or conditional release the attending physician shall notify the clerk of superior court. The clerk shall calendar a hearing and shall give notice as provided by G.S. 122C-264(d1). The district attorney for the original trial may represent the State's interest at the hearing. The hearing shall be conducted under the standards and procedures set forth in G.S. 122C-268.1. Provided, that in no event shall discharge or conditional release under this section be allowed for a respondent during the period from automatic commitment to hearing under G.S. 122C-268.1.
- (c) If a committed respondent under subsections (a), (b), or (b1) of this section is from a single portal area, the attending physician shall plan jointly with the area authority as prescribed in the area plan before discharging or releasing the respondent. (1973, c. 726, s. 1; c. 1408, s. 1; 1981, c. 537, s. 5; 1983, c. 383, s. 6; c. 638, s. 21; c. 864, s. 4; 1985, c. 589, s. 2; 1991, c. 37, s. 6.)

STATE OF NORTH CAROLINA	File No.
County	In The General Court Of Justice  District Duperior Court Division
STATE VERSUS	
Name Of Defendant	MOTION AND ORDER
	APPOINTING LOCAL CERTIFIED
	FORENSIC EVALUATOR
	G.S. 15A-1002
Offense (copy of charging document(s) attached)	
MOTION QUESTIONING	DEFENDANT'S CAPACITY TO PROCEED
defendant is unable to understand the nature and object	It be examined to determine whether by reason of mental illness or defect the of the proceedings against the defendant, to comprehend his/her own situation fense in a rational or reasonable manner. The specific conduct that leads the ceed 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. de	fendant.
and custody of the U.S. Postal Service directed to the	dressed envelope, in a post office or official depository under the exclusive care stendard.
leaving a copy at the office of the	
defendant's attorney with an associate or employe	ee. prosecutor with an associate or employee.
Name And Title Of Person With Whom Copy Left	
Service accepted by:	
<u> </u>	fendant.
Signature Of Person Accepting Service •	Date Served
	Signature Of Person Serving
	Title
Original-File Copy - Local Management to	Entity Copy - Moving Party Copy-Opposing Party Copy-Sheriff (Over)

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Following a hearing under G.S. 15A-1002, and a review of the record in this case, including the forensic evaluation of the defendant, the court has determined that (check one)

CAPACITY DETERMINATION

1. the defendant is ABLE to understand the nature and object of the proceedings against him/her, to comprehend his/her own situation in reference to the proceedings, and to assist in his/her defense in a rational and reasonable manner. Accordingly, this matter shall proceed.

2. by reason of mental illness or defect, the defendant is **UNABLE** to (check all that apply) understand the nature and object of the proceedings against him/her comprehend his/her own situation in reference to the proceedings assist in his/her defense in a rational or reasonable manner and therefore the defendant lacks capacity to proceed.

Date Name Of Presiding Judge (Type Or Print) Signature Of Presiding Judge

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 CENTRAL REGIONAL HOSPITAL - RALEIGH CAMPUS FOR EXAMINATION ON CAPACITY TO PROCEED G.S. 15A-1002
Offense (copy of charging document(s) attached)	
be ordered. In felony cases, a local examination must be ordered by finds that a local impartial medical expert or forensic evaluator cert. Disabilities and Substance Abuse Services is available and approp NOTE: The address for Central Regional Hospital - Butner Campus is Fore 300 Veazey Road, Butner, NC 27509. The telephone number is 9	ensics Services Unit, Central Regional Hospital - Butner Campus, 19-764-5009 and the fax number is 919-764-5022.
The undersigned moves that the above named defendant be exam	ined to determine whether by reason of mental illness or defect the ceedings against the defendant, to comprehend his/her own situation rational or reasonable manner. The specific conduct that leads the follows:
Date Signature	Prosecutor Defendant's Attorney
	Judge
I certify that a copy of this Motion was served by:  delivering a copy personally to the defendant's attorney. prosecutor. defendant.	rapper, in a post office or official depository under the exclusive care
leaving a copy at the office of the defendant's attorney with an associate or employee.  Name And Title Of Person With Whom Copy Left	prosecutor with an associate or employee.
Service accepted by:  defendant's attorney. prosecutor. defendant.	
Signature Of Person Accepting Service	Date Served
	Signature Of Person Serving
	Title

Original-File Copy-Hospital Copy-Moving Party Copy-Opposing Party Copy - Sheriff (Over)

FINI	DINGS		
This cause was heard before the undersigned judge upon the motion	n of the person named on the reverse questioning the defendant's		
capacity to proceed. Having considered the motion, and after hearin  1. The defendant's capacity to proceed is in question.	is not in question.		
	elony.		
3 The defendant has been examined in connection with the curr	rent charges by one or more local impartial medical experts or n for Mental Health, Developmental Disabilities and Substance Abuse		
(NOTE: A person charged with a misdemeanor must have a local ex	xamination before an examination at a state facility may be ordered.)		
4. An examination of the defendant at Central Regional Hospital more appropriate under the provisions of G.S. 15A-1002(b)(2)	- Butner Campus to determine the defendant's capacity would be		
	DER The recommendation of the recommendation		
It is ORDERED that:	[1] (1) (1) (1) (1) (1) (1) (1) (1) (1) (1)		
The defendant be committed to Central Regional Hospital - Raleigh C treatment, pursuant to G.S. 15A-1002, to determine the defendant's c Raleigh Campus with a copy of this Order, the defendant's charging d Central Regional Hospital - Raleigh Campus must direct a written rep attorney and to the Clerk of Superior Court for the above referenced documents to Central Regional Hospital - Raleigh Campus and shall completed.	apacity to proceed. The moving party shall provide Central Regional Hospital - locument(s) and any local forensic report on the defendant. The Director of out describing the present state of the defendant's mental health to the defense county. The sheriff of this county shall transfer the defendant and all relevant return the defendant to this county when notified that the evaluation has been		
clinician, licensed health care facility, licensed health care provider, lo Department of Correction, the North Carolina Department of Juvenile school district is hereby authorized and required to furnish copies of a to alcohol abuse, drug abuse and psychological or psychiatric condition Regional Hospital - Butner Campus.	esignated by Central Regional Hospital - Butner Campus, any physician or ocal management entity (LME), area mental health program, the North Carolina Justice and Delinquency Prevention, any county detention facility, or any all records, including school records and records containing information relating ons, concerning defendant to the forensic evaluator designated by Central		
Upon request of the forensic evaluator designated by Central Regional Hospital - Butner Campus, counsel for the State and defendant shall furnish to the forensic evaluator designated by Central Regional Hospital - Butner Campus 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			
Name And Address Of Defendant's Attomey	Date		
	Signature Of Presiding Judge		
,	Signature Of Presiding Judge		
Telephone No.	Signature Of Presiding Judge  Name Of Presiding Judge (Type Or Print)		
·	Name Of Presiding Judge (Type Or Print)		
RETURN O			
·	Name Of Presiding Judge (Type Or Print)  F SERVICE		
RETURN O  I certify that this Order was received and served as follows:	Name Of Presiding Judge (Type Or Print)  F SERVICE		
RETURN O  I certify that this Order was received and served as follows:  By transporting the defendant to Central Regional Hospital - Butr	Name Of Presiding Judge (Type Or Print)  F SERVICE		
RETURN O  I certify that this Order was received and served as follows:  By transporting the defendant to Central Regional Hospital - Butr	Name Of Presiding Judge (Type Or Print)  F SERVICE		
RETURN O  I certify that this Order was received and served as follows:  By transporting the defendant to Central Regional Hospital - Butr	Name Of Presiding Judge (Type Or Print)  F SERVICE		
RETURN O  I certify that this Order was received and served as follows:  By transporting the defendant to Central Regional Hospital - Butr  Other: (specify)	Name Of Presiding Judge (Type Or Print)  F SERVICE  ner Campus.		
RETURN O  I certify that this Order was received and served as follows:  By transporting the defendant to Central Regional Hospital - Butr  Other: (specify)  Date Received  Date Served  Date Of Return	Name Of Presiding Judge (Type Or Print)  F SERVICE  ner Campus.  Signature Of Deputy Sheriff Making Return		
RETURN O  I certify that this Order was received and served as follows:  By transporting the defendant to Central Regional Hospital - Butr  Other: (specify)  Date Received	Name Of Presiding Judge (Type Or Print)  F SERVICE  mer Campus.  Signature Of Deputy Sheriff Making Return  Name Of Deputy Sheriff Making Return (Type Or Print)  County Of Sheriff		
RETURN O  I certify that this Order was received and served as follows:  By transporting the defendant to Central Regional Hospital - Butr  Other: (specify)  Date Received  Date Served  Date Of Return  Name Of Sheriff (Type or Print)  CAPACITY DE	Name Of Presiding Judge (Type Or Print)  F SERVICE  ner Campus.  Signature Of Deputy Sheriff Making Return  Name Of Deputy Sheriff Making Return (Type Or Print)  County Of Sheriff  TERMINATION		
RETURN O  I certify that this Order was received and served as follows:  By transporting the defendant to Central Regional Hospital - Butr  Other: (specify)  Date Received  Date Served  Date Of Return  Name Of Sheriff (Type or Print)  CAPACITY DE  Following a hearing under G.S. 15A-1002, and a review of the record	Name Of Presiding Judge (Type Or Print)  F SERVICE  ner Campus.  Signature Of Deputy Sheriff Making Return  Name Of Deputy Sheriff Making Return (Type Or Print)  County Of Sheriff  TERMINATION		
RETURN O  I certify that this Order was received and served as follows:  By transporting the defendant to Central Regional Hospital - Butr  Other: (specify)  Date Received  Date Served  Date Of Return  Name Of Sheriff (Type or Print)  CAPACITY DE  Following a hearing under G.S. 15A-1002, and a review of the record court has determined that (check one)  1. the defendant is ABLE to understand the nature and object of situation in reference to the proceedings, and to assist in his/	Name Of Presiding Judge (Type Or Print)  F SERVICE  ner Campus.  Signature Of Deputy Sheriff Making Return  Name Of Deputy Sheriff Making Return (Type Or Print)  County Of Sheriff  TERMINATION  d in this case, including the forensic evaluation of the defendant, the		
RETURN O	Name Of Presiding Judge (Type Or Print)  F SERVICE  There Campus.  Signature Of Deputy Sheriff Making Return  Name Of Deputy Sheriff Making Return (Type Or Print)  County Of Sheriff  TERMINATION  d in this case, including the forensic evaluation of the defendant, the of the proceedings against him/her, to comprehend his/her own there defense in a rational and reasonable manner. Accordingly, this  LE to (check all that apply)  understand the nature and object of own situation in reference to the proceedings assist in his/her		
RETURN O	Name Of Presiding Judge (Type Or Print)  F SERVICE  There Campus.  Signature Of Deputy Sheriff Making Return  Name Of Deputy Sheriff Making Return (Type Or Print)  County Of Sheriff  TERMINATION  d in this case, including the forensic evaluation of the defendant, the of the proceedings against him/her, to comprehend his/her own there defense in a rational and reasonable manner. Accordingly, this  LE to (check all that apply)  understand the nature and object of own situation in reference to the proceedings assist in his/her		

### File No. STATE OF NORTH CAROLINA In The General Court Of Justice County **District Court Division** IN THE MATTER OF: INVOLUNTARY COMMITMENT Name And Address Of Respondent **CUSTODY ORDER DEFENDANT FOUND** INCAPABLE TO PROCEED G.S. 15A-1003, -1004; 122C-261, -262, -263 I. FINDINGS Constitution of the Consti with a criminal offense in the above named county The respondent has been charged in File No. and 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** County: To The Sheriff Of 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 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.

<b>一个写话的话,这样写话</b>	<b>特別的數學完整</b>	II. RETURN	OF SERVICE	- 华岛花艺艺家的古老城		<b>当</b> 在1475年
☐ I certify that this Order was	received and se	rved as follows	<b>3</b> :			
Date Respondent Taken Into Custody	•		Time		П АМ	□ РМ
A. FOR	USE WHEN RES	SPONDENT NO	OT CHARGED V	VITH VIOLENT CRIME		Calledon Maria
☐ 1. The respondent was pre					E ( Mark Commerce and Commerce	
2. The respondent was ten authorized examiner loc		d at the facility	named below un	itil the respondent could	d be examin	ed by an
Date Presented	Time	AM PM	Name Of Examiner			
Name Of Local Facility						
1. Upon examination, the ecommitment. I returned						
2. Upon examination, the e commitment.	xaminer named	above found th	at the responder	nt did meet the criteria t	for inpatient	
I transported the resp below for observation		ed the respond	lent in the tempo	rary custody of the 24-	hour facility	named
I placed the responde	ent in the custody	of the agency	named below fo	r transportation to the	24-hour faci	lity.
3. Upon examination, the e outpatient commitment.						
The examiner's written statem	nent 🗌 is a	attached.	will be forwarde	ed.		
Name Of 24-Hour Facility			Date Delivered	Time Delivered	AM Date C	of Return
Name Of Transporting Agency			Signature Of Law Enfo	rcement Official	<del></del>	
B. FC	OR USE WHEN F	RESPONDENT	CHARGED WIT	TH VIOLENT CRIME	1000	43F447F7X
☐ I transported the responder	nt directly to and	placed him/her	in the temporar	y custody of the facility	named belo	w.
Name Of 24-Hour Facility		·	Date Delivered	Time Delivered	AM Date C	f Return
Name Of Transporting Agency			Signature Of Law Enfo	rcement Öfficial		
C. FOR U	JSE WHEN ANO	THER AGENC	Y TRANSPORT	S THE RESPONDENT		
☐ I took custody of the resportemporary custody of the fa	ndent from the off cility named belo	ficer named abow for observat	ove, transported ion and treatmer	the respondent and plant.	aced him/he	r in the
Name Of 24-Hour Facility			Date Delivered	Time Delivered	AM Date 0	f Return
Name Of Transporting Agency			Signature And Rank Of	Law Enforcement Official		
D. FOR	USE WHEN STA	TE FACILITY	TRANSFERS W	THOUT ADMISSION	11.4	
Pursuant to G.S. 122C-261 he/she was not admitted, an named below for observation	nd transported the	e respondent a	dent from the sta and placed him/h	ate 24-hour facility name er in the temporary cus	ed above, water	here facility
Name Of Facility To Which Transferred			Date Delivered	Time Delivered	AM Date 0	f Return
Name Of Transporting Agency			Signature Of Law Enfor	cement Or State Facility Official	<del> , _</del> - <u>-</u>	

		· · · · · · · · · · · · · · · · · · ·	Special Proceeding File No.
STATE OF NORTH CAROLINA			
			Criminal File No.
	County		
	County		Additional File Nos.
			I The Count Of Indian
			In The General Court Of Justice ☐ District ☐ Superior Court Division
CTATE VI	rpelle	I	District Depends Court Britision
Name Of Defendant/Respondent	ERSUS		AND ADDOLUTION OF DEFENOE
			AND APPOINTMENT OF DEFENSE
Social Security No.	1   Has No Social Security No.	<b>,</b>	FOR COMMITTED RESPONDENT
State Mental Health Facility Where Defendant		CHA	RGED WITH VIOLENT CRIME
State Westan Ficality admity viviere bereficial	, to spondoni no committee	G.S. 7A-4	451; 15A-1008, -1009; 122C-261(c), -268, -268.1, -270(a)
INSTRUCTIONS: Special Counsel at	t a state mental health facility complet	es Part I of this form	to petition the Court for appointment of criminal defense
counsel for a respo	ondent who has been involuntarily con	nmitted after a finding	g of incapacity to proceed in a criminal case, and may be Court completes Part II of this form to assign or deny
appointed counsel	for the criminal case and completes A	NOC-CR-224. The Cli	erk records the criminal case appointment in the
Automated Crimina	al Information System and provides a	copy of the form to th	ne appointed criminal defense attorney.
I. SPECIAL	COUNSEL PETITION FOR A	PPOINTMENT (	OF DEFENSE COUNSEL
The above named defendant/response	endent is charged in the above na	med county with th	ne violent crime of (specify offense)
			rt to be incapable of proceeding to trial pursuant to
G.S. 15A-1002 and involuntarily co	•		
Upon information and belief, the de	itendant/respondent was previous 450(a): was again found to be ind	igent pursuant to G	gent and entitled to appointed counsel in the 3.S. 122C-261(c) and -270(a), or refused to retain
counsel in the commitment proceed	dings as provided in G.S. 122C-26	68(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			riod of time equal to or in excess of the maximum smiss 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 the case, and the court may dismiss the criminal charge(s) pursuant to G.S. 15A-1008(3).			date of determination of incapacity to proceed in -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).			of determination of incapacity to proceed in the
I the undersigned am employed a	s Special Counsel at the above na attorney in the above named cour	amed state mental	health facility and make application for iate action in the criminal case(s) pursuant to G.S.
Date	Signature Of Special Counsel		Name Of Special Counsel (Type Or Print)
	II. ASSIGNMENT OR I	DENIAL OF COL	JNSEL A A A A
a proceeding listed in G.S. 7A-451 is determined that the defendant/re	<ul><li>(a); and, after consideration of the espondent:</li></ul>	e prior indigency fir	above named county with a violent crime, which is ndings and involuntary commitment in this case, it
defendant/respondent is no	t an indigent and the petition is de	enied.	the criminal case; it is ORDERED that the
defendant/respondent is an represented by:  the atto	indigent and is entitled to the sen orney named below.	vices of counsel as ne public defender	n in the criminal case; it is ORDERED that the scontemplated by law, and that he/she shall be in this judicial district.
It is further ORDERED that the Cle System.	erk of Superior Court shall record	this appointment o	f counsel in the Automated Criminal Information
Name Of Appointed Criminal Defense Attorney	(If Applicable)		Next Court Date
			[ ]
Date	Signature Of Judge		Name Of Judge (Type Or Print)

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STATE OF NORTH CAROLINA	File No.
County	In The General Court Of Justice  District Superior Court Division
STATE VERSUS	THE TIEN AND OPPED
ame Of Defendant	MOTION AND ORDER
	APPOINTING LOCAL CERTIFIED
	FORENSIC EVALUATOR G.S. 15A-100
ffense (copy of charging document(s) attached)	
MOTION QUESTIONING DEFEN	DANT'S CAPACITY TO PROCEED
The undersigned moves that the above named defendant be exam defendant is unable to understand the nature and object of the procin reference to the proceedings, or to assist in his/her defense in a moving party to question the defendant's capacity to proceed is as	nined to determine whether by reason of mental illness or defect the ceedings against the defendant, to comprehend his/her own situation rational or reasonable manner. The specific conduct that leads the follows:-
ate Signature	Prosecutor Defendant's Attorney  Defendant Judge
ame And Address Of Defendant's Attorney	District Attorney's Office Address
elephone No.	Telephone No.
CERTIFICATE OF SERV	ICE BY MOVING PARTY
I certify that a copy of this Motion was served by:	
delivering a copy personally to the	
defendant's attorney.	
depositing a copy, enclosed in a postpaid properly addressed e and custody of the U.S. Postal Service directed to the defendant's attorney. prosecutor. defendant.	envelope, in a post office or official depository under the exclusive care
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	
Name And Title Of Person With Whom Copy Left  Service accepted by: defendant's attorney. prosecutor. defendant.	
Service accepted by:  defendant's attorney. prosecutor. defendant.	Date Served
Service accepted by:	Date Served Signature Of Person Serving
Service accepted by:  defendant's attorney. prosecutor. defendant.	

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一种是一种的一种。	DER APPOINTING LOCAL CE	KIIFIED FOREN	SIC EVALUATOR
A motion questioning the defend capacity to proceed is in question		en made and consi	dered, the Court finds that the defendant's
1. One or more Forensic Evalu	ators of the Local Management En	tity named below, co this Order and dete	ertified by the North Carolina Forensic Services, ermine the questions set forth in the motion.
The Area Director of the Loc the Court.	cal Management Entity shall cause	a written report of fi	ndings and recommendations to be submitted to
If the screening examination the evaluator shall arrange f summary shall be transmitte evaluation by medical experthe Court immediately.	or this evaluation and notify the Cle d to the Court in the manner descri ts at the forensic unit of Central Re	rk of Superior Cour bed later in this Orc gional Hospital - Bu	ch can be done at the Local Management Entity, it in writing. The medical expert's evaluation ler. If the screening examination reveals that the ther Campus is needed, the evaluator shall notify
(a) A brief covering stateme enclosed in an envelope (b) Three copies of the composite to the attention of the undefendant, if the defendant	addressed to the Clerk of Superior plete report shall be prepared. Two dersigned judge and marked "confice ant is not represented by counsel.	examination and any Court in this county copies are to be endential," one copy is	y conclusions) shall be prepared in duplicate and y closed in a separate sealed envelope addressed to be forwarded to defense counsel, or to the
envelope which shall be case.	addressed to the Clerk of Superior	Court of this county	essed to the Judge shall be enclosed in a larger . All envelopes shall show the file number of the
(d) The Clerk shall open and envelope addressed to the	d file the covering statement with the he undersigned Judge until request	e Court file. The cor ed by the Court.	nplete report shall be retained unopened in the
Local Management Entity wi	ediately advise the Local Managem th a copy of this Order and the defe to the jailer of this county if the def	endant's charging do	elow of the entry of this Order and shall provide the ocument(s). The moving party shall transmit an
6. a. The Sheriff is Ordere designated by the Lo	d to transport the defendant and all cal Management Entity and return t	relevant document he defendant afterv	s to the Certified Local Forensic Evaluator vards. Evaluator designated by the Local Managment
Name Of Local Management Entity		Date	
		Signature Of Judge	
	·	Name Of Judge (Type (	Or Print)
	RETURN O	F SERVICE	
I certify that this Order was re ☐ By transporting the defend ☐ Other: (specify)		sic Evaluator desi	gnated by the Local Management Entity.
Date Received		Signature Of Deputy Sh	eriff Making Retum
Date Served	Date Of Return	Name Of Deputy Sherifi	Making Return (Type Or Print)
Name Of Sheriff (Type Or Print)	<u> </u>	County Of Sheriff	
			The state of the s
Following a hearing under G.S. 1 court has determined that (check of		d in this case, includ	ing the forensic evaluation of the defendant, the
1 the defendant is ABLE to	understand the nature and object o	f the proceedings a her defense in a rati	gainst him/her, to comprehend his/her own onal and reasonable manner. Accordingly, this
2. by reason of mental illness the proceedings against h	s or defect, the defendant is <b>UNAB</b> im/her  comprehend his/her of asonable manner and therefore the	wn situation in refer	ence to the proceedings
Date	Name Of Presiding Judge (Type Or Print)		Signature Of Presiding Judge
i e	1		1

STATE OF NORTH CAROLINA		File No.
Count	ty	In The General Court Of Justice  District Superior Court Division
lame Of Defendant		MOTION AND ORDER COMMITTING DEFENDANT CENTRAL REGIONAL HOSPITAL - CIGH CAMPUS FOR EXAMINATION ON CAPACITY TO PROCEED G.S. 15A-100
offense (copy of charging document(s) attached)		, , , , , , , , , , , , , , , , , , ,
be ordered. In felony cases, a local examination finds that a local impartial medical expert or forei Disabilities and Substance Abuse Services is av NOTF. The address for Central Regional Hospital - Butr	must be ordered before an examina nsic evaluator certified under the ru ailable and appropriate. To order a ner Campus is Forensics Services U	Init, Central Regional Hospital - Butner Campus,
300 Veazey Road, Butner, NC 27509. The telep	phone number is 919-764-5009 and DNING DEFENDANT'S CAP	the fax number is 919-764-5022.
moving party to question the defendant's capacity	·	
ate Signature		Prosecutor Defendant's Attorne
CEPTIEIC	ATE OF SERVICE BY MOV	_ Judge
I certify that a copy of this Motion was served by:  delivering a copy personally to the defendant's attorney. prosecutor.		Local Control of Control State Control State Control of
depositing a copy, enclosed in a postpaid proper and custody of the U.S. Postal Service directed defendant's attorney. prosecutor.	<ul><li>defendant.</li><li>erly addressed wrapper, in a po</li><li>to the</li><li>defendant.</li></ul>	st office or official depository under the exclusive care
and custody of the U.S. Postal Service directed	erly addressed wrapper, in a po I to the defendant.	st office or official depository under the exclusive care it is a second of the exclusive care it is an associate or employee.
and custody of the U.S. Postal Service directed defendant's attorney. prosecutor.  leaving a copy at the office of the defendant's attorney with an associate or en	erly addressed wrapper, in a po I to the defendant.	
and custody of the U.S. Postal Service directed defendant's attorney. prosecutor.  leaving a copy at the office of the defendant's attorney with an associate or en Name And Title Of Person With Whom Copy Left  Service accepted by: defendant's attorney. prosecutor.	erly addressed wrapper, in a po it to the defendant. mployee. prosecutor w	
and custody of the U.S. Postal Service directed defendant's attorney. prosecutor.  leaving a copy at the office of the defendant's attorney with an associate or en Name And Title Of Person With Whom Copy Left  Service accepted by: defendant's attorney. prosecutor.	erly addressed wrapper, in a po it to the defendant. mployee. prosecutor w	ith an associate or employee.
and custody of the U.S. Postal Service directed defendant's attorney. prosecutor.  leaving a copy at the office of the defendant's attorney with an associate or en Name And Title Of Person With Whom Copy Left  Service accepted by:	erly addressed wrapper, in a pool to the defendant.  mployee. prosecutor w defendant.  Date Served	ith an associate or employee.

Original-File Copy-Hospital Copy-Moving Party Copy-Opposing Party Copy - Sheriff (Over)

AOC-CR-208, Rev. 1/11
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FINE	DINGS
This cause was heard before the undersigned judge upon the motion	n of the person named on the reverse questioning the defendant's
capacity to proceed. Having considered the motion, and after hearin  1. The defendant's capacity to proceed is in question.	ng evidence, the Court finds that:  It is not in question.
2. The defendant is charged with $\Box$ a misdemeanor. $\Box$ a f	elony.
	rent charges by one or more local impartial medical experts or n for Mental Health, Developmental Disabilities and Substance Abuse
Services. (NOTE: A person charged with a misdemeanor must have a local expension of the control	xamination before an examination at a state facility may be ordered.)
4. An examination of the defendant at Central Regional Hospital more appropriate under the provisions of G.S. 15A-1002(b)(2)	- Butner Campus to determine the defendant's capacity would be
	DER A CONTRACTOR OF THE CONTRA
It is ORDERED that:	
Raleigh Campus with a copy of this Order, the defendant's charging differential Regional Hospital - Raleigh Campus must direct a written repeattorney and to the Clerk of Superior Court for the above referenced documents to Central Regional Hospital - Raleigh Campus and shall completed.	apacity to proceed. The moving party shall provide Central Regional Hospital - locument(s) and any local forensic report on the defendant. The Director of  ort describing the present state of the defendant's mental health to the defense  county. The sheriff of this county shall transfer the defendant and all relevant  return the defendant to this county when notified that the evaluation has been
clinician, licensed health care facility, licensed health care provider, lo Department of Correction, the North Carolina Department of Juvenile school district is hereby authorized and required to furnish copies of a to alcohol abuse, drug abuse and psychological or psychiatric condition Regional Hospital - Butner Campus.	esignated by Central Regional Hospital - Butner Campus, any physician or ocal management entity (LME), area mental health program, the North Carolina Justice and Delinquency Prevention, any county detention facility, or any ill records, including school records and records containing information relating ons, concerning defendant to the forensic evaluator designated by Central
to the forensic evaluator designated by Central Regional Hospital - Bu evaluator requests, including but not limited to copies of law enforcem defendant's medical records, and prior psychiatric or psychological ev divulge any information, documents, notes, or memoranda that are pr	
2. The motion is denied as the defendant's capacity to proceed is not in	
Name And Address Of Defendant's Attorney	Date
	Signature Of Presiding Judge
Telephone No.	Name Of Presiding Judge (Type Or Print)
PETIENO	F SERVICE
I certify that this Order was received and served as follows:	F SERVICE
By transporting the defendant to Central Regional Hospital - Butr	ner Campus.
Other: (specify)	
Date Received	Signature Of Deputy Sheriff Making Return
Date Served Date Of Return	Name Of Deputy Sheriff Making Return (Type Or Print)
Name Of Sheriff (Type or Print)	County Of Sheriff
CAPACITY DE	
Following a hearing under G.S. 15A-1002, and a review of the record court has determined that (check one)	d in this case, including the forensic evaluation of the defendant, the
the defendant is <b>ABLE</b> to understand the nature and object of situation in reference to the proceedings, and to assist in his/li	of the proceedings against him/her, to comprehend his/her own her defense in a rational and reasonable manner. Accordingly, this
matter shall proceed.  2. by reason of mental illness or defect, the defendant is <b>UNAB</b> the proceedings against him/her comprehend his/her o	wn situation in reference to the proceedings assist in his/her
defense in a rational or reasonable manner and therefore th	e defendant lacks capacity to proceed.  Signature Of Presiding Judge
Date Name Of Presiding Judge (Type Or Print)	

#### File No. STATE OF NORTH CAROLINA In The General Court Of Justice County District Court Division IN THE MATTER OF: INVOLUNTARY COMMITMENT Name And Address Of Respondent **CUSTODY ORDER DEFENDANT FOUND** INCAPABLE TO PROCEED G.S. 15A-1003, -1004; 122C-261, -262, -263 I. FINDINGS with a criminal offense in the above named county The respondent has been charged in File No. \_ and 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 Name Of Law Enforcement Agency enforcement agency named below. **CUSTODY ORDER** County: To The Sheriff Of 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.

	型	II. RETURN	OF SERVICE	A SANCE TO A SECURITY OF THE S		國際語言語
☐ I certify that this Order was	received and se	rved as follows	<b>S</b> :			
Date Respondent Taken Into Custody			Time		AM	PM
A. FOR	USE WHEN RES	PONDENT NO	T CHARGED W	ITH VIOLENT CRIM	E DOVING	ir si ta
1. The respondent was pre					133,00,300,000	
2. The respondent was ten authorized examiner loc		at the facility	named below un	til the respondent cou	ld be examin	ed by an
Date Presented	Time	☐ AM	Name Of Examiner			
Name Of Local Facility	<u> </u>	<u></u>				
1. Upon examination, the ecommitment. I returned						
2. Upon examination, the ecommitment.						
I transported the resp below for observation	ondent and place and treatment.	ed the respond	dent in the tempo	rary custody of the 24	-hour facility	named
I placed the responde	ent in the custody	of the agency	named below fo	r transportation to the	24-hour faci	lity.
3. Upon examination, the e outpatient commitment.	examiner named a	above found the spondent to his	at the responder s/her regular resi	it did not meet the crit dence or the home of	eria for inpat a consenting	ient or g person.
The examiner's written staten	nent 🗌 is a	ittached.	will be forwarde	d.		
Name Of 24-Hour Facility			Date Delivered	Time Delivered	AM Date 0	Of Return
Name Of Transporting Agency			Signature Of Law Enfo	rcement Official	L FIMI	
B. FC	OR USE WHEN R	RESPONDENT	CHARGED WIT	H VIOLENT CRIME		
☐ I transported the responder	nt directly to and p	placed him/he	r in the temporary	custody of the facility	y named belo	ow.
Name Of 24-Hour Facility	. ,		Date Delivered	Time Delivered	AM Date C	of Return
Name Of Transporting Agency		X	Signature Of Law Enfor	cement Official		
C. FOR I	JSE WHEN ANO	THER AGEN	Y TRANSPORT	S THE RESPONDEN	T	THE REAL PROPERTY.
☐ I took custody of the respontemporary custody of the fa	ndent from the off acility named belo	icer named ab w for observat	oove, transported tion and treatmen	the respondent and p t.	laced him/he	er in the
Name Of 24-Hour Facility			Date Delivered	Time Delivered	AM Date C	of Return
Name Of Transporting Agency			Signature And Rank Of	Law Enforcement Official		
D. FOR	USE WHEN STA	TE FACILITY	TRANSFERS W	THOUT ADMISSION	744	
Pursuant to G.S. 122C-261 he/she was not admitted, a named below for observation	ind transported the	e respondent :	dent from the sta and placed him/h	te 24-hour facility nan er in the temporary cu	ned above, v istody of the	vhere facility
Name Of Facility To Which Transferred			Date Delivered	Time Delivered	AM Date C	of Return
Name Of Transporting Agency			Signature Of Law Enfor	cement Or State Facility Officia		

STATE OF NORTH CAROLINA			Special Proceeding File No.		
			Criminal File No	).	
County			Additional File N	los.	
			In The ☐ Distric	e General Court t	
STATE VI	EBSIIS				
Name Of Defendant/Respondent	LN303	PETITION A	AND APPO	DINTMENT OF	DEFENSE
Social Security No.	Has No Social Security No.	COUNSEL	FOR COM	MITTED RES	PONDENT
State Mental Health Facility Where Defendant	/Respondent Is Committed	CHA	RGED WIT	H VIOLENT C	CRIME
,		G.S. 7A-4	451; 15A-1008,	-1009; 122C-261(c),	-268, -268.1, -270(a)
entitled to dismissa appointed counsel	t a state mental health facility complet ondent who has been involuntarily con al of the criminal charges pursuant to ( for the criminal case and completes A al Information System and provides a	nmitted after a finding G.S. 15A-1008. The C OC-CR-224. The Cl	g of incapacity to Court completes erk records the o	o proceed in a crimina Part II of this form to criminal case appoint	al case, and may be a assign or deny ment in the
I. SPECIAL	COUNSEL PETITION FOR A	PPOINTMENT (	OF DEFENSI	E COUNSEL	14 TO 16
The above named defendant/respo	ondent is charged in the above nate	med county with the found by the Cou	ne violent crime ort to be incapa	e of (specify offense) ble of proceeding	to trial pursuant to
G.S. 15A-1002 and involuntarily co	mmitted pursuant to G.S. 122C-2	68.			•
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.				refused to retain	
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).					suant to
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).					uant to
3. The charge(s) identified above is a misdemeanor, 5 years have passed from the date of determination of incapacity to proceed 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).			roceed in the		
I, the undersigned, am employed a appointment of a criminal defense a 15A-1008 and any other applicable	attorney in the above named coun	amed state mental ty to take appropri	health facility is the action in the	and make applicat ne criminal case(s)	ion for pursuant to G.S.
Date	Signature Of Special Counsel		Name Of Special	Counsel (Type Or Print	)
	II. ASSIGNMENT OR I	DENIAL OF COL	INSFI		
It appears to the Court that the about a proceeding listed in G.S. 7A-451 is determined that the defendant/re	ove named defendant/respondent (a); and, after consideration of the	is charged in the a	above named	county with a viole	nt crime, which is
1. is financially able to provide		representation in t nied.	the criminal ca	se; it is ORDERED	) that the
defendant/respondent is an represented by:  the atte	•	vices of counsel as e public defender	s contemplated in this judicial	d by law, and that hat district.	ne/she shall be
It is further ORDERED that the Cle System.	erk of Superior Court shall record	this appointment o	f counsel in the	e Automated Crimi	inal Information
Name Of Appointed Criminal Defense Attorney	/ (If Applicable)			Next Court Date	
Date .	Signature Of Judge		Name Of Judge (	Type Or Print)	
			L		



## NORTH CAROLINA GENERAL ASSEMBLY

Raleigh, North Carolina 27601

#### 12-28-2011

#### **MEMORANDUM** -

TO:	Members of the LRC Subcommittee on Incapacity to Proceed			
FROM:	Representative Shir	rley B. Randleman, Chair		
SUBJECT:	Meeting Notice	And the second		

DAYDATETIMEROOMWednesdayJanuary 11, 20122:00 pm415 LOB

Parking for non-legislative members of the committee/commission is available in the visitor parking deck #75 located on Salisbury Street across from the Legislative Office Building. Parking is also available in the parking lot across Jones Street from the State Library/Archives. You can view a map of downtown by visiting <a href="http://www.ncleg.net/graphics/downtownmap.pdf">http://www.ncleg.net/graphics/downtownmap.pdf</a>.

If you are unable to attend or have any questions concerning this meeting, please contact James White (Rep. Randleman) at 919-733-5935.

cc:	Committee Record	_X_
	Interested Parties	_X_

## **ATTENDANCE**

## **Incapacity to Proceed Study Committee 2011-12**

													,
DATES													
01-11-2012													
Rep. Shirley Randleman													
Rep. Justin Burr								<del>-</del>					
rep. oustin Dui i													
Rep. John Faircloth	\ <u>\</u>		:		, i								
Rep. Pat Hurley	V												
		Z											
Rep. Frank McGuirt	<b>\</b>				٠.				••••				
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#### Members' In-State Reimbursement Form

Form: PR008

Administrative Division Financial Services Section

This form is used to request for in-state reimbursement for subsistence and travel for Committee, Commission or Other In-State Meetings/Legislative Business by members.

Rev: 09/2010
Financial Services Use:
Budget to Charge

	LRC Subcommittee	on incapacity to	o Proceed	
(Complete Name of	of Committee or Com			eeting/Business)
Location of Meeting	(City): Raleigh, NC	,		
Date(s) of Meeting:	01-11-2012			
Member:	Rep. Justin Burr			
Total Number of day (This line MUST be comple		ned		
Arrived the day prio (Claim one day for each me spending the night prior to are entitled to an extra day.	eting day you attended. If the first meeting day, you	Yes	No l	
Car Mileage (Fill out this line if mileage	s different than what is ce	rtified on file)	214	
Number of Round Ti	rips	And (M	ember's Sign	MA.
[Must be approved by Char Senate President Pro Temp House Speaker]		/ Sep. (Aj	Muluff pproval Signa	andlems_
Names of other official	legislative or state go	vernment meeti	ngs attended (	during this visit:
Number of day's subs	sistence claimed for	other meeting(	(s)	
Car Mileage claimed	for <u>other</u> meeting		Yes 🗌	No
Committee Assistant N	ame:James White			Ext.# 3-5935

DAVIG



#### Members' In-State Reimbursement Form

Form:	PR008
TOLILL:	1 1/000

Administrative Division **Financial Services Section** 

This form is used to request for in-state reimbursement for subsistence and travel for Committee, Commission or Other In-State Meetings/Legislative Business by members.

Rev: 09/2010 Financial Services Use: **Budget to Charge** 

	LRC Subcommittee of	n Incapacity to Proceed	
(Complete Name of		nission or Description of M	deeting/Business)
Location of Meeting	(City): Raleigh, NC		300
Date(s) of Meeting:	01-11-2012		
Member:	Rep. Pat Hurley		
Total Number of day (This line MUST be comple	r's subsistence claime ted to be reimbursed)	d/_	
Arrived the day prio (Claim one day for each me spending the night prior to are entitled to an extra day.	eting day you attended. If the first meeting day, you	Yes No	
Car Mileage (Fill out this line if mileage	s different than what is certi	fied on file)	
Number of Round To	rips		-
[Must be approved by Cha Senate President Pro Temp		Member's Sig	nature)
House Speaker]		(Approval Sign	ature)
Names of other official	legislative or state gove	ernment meetings attended	during this visit:
NI C I			
Number of day's sub	sistence claimed for o	ther meeting(s)	<del></del>
Car Mileage claimed	for <u>other</u> meeting	Yes 🗌	No 🗌
Committee Assistant N	ame:James White		Ext.# 3-5935



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Rev: 09/2010

Financial Services Use:

Budget to Charge

I	LRC Subcommittee on Ir	capacity to Proc	eed	
(Complete Name of	Committee or Commiss	ion or Description	on of Meeti	ng/Business)
T. 10 ATM 10 4	au > p + + + > -		1	la de la companya de
Location of Meeting (	City): Raleigh, NC			
Data(a) af Mantingar (	11 11 2012			
Date(s) of Meeting: (	01-11-2012		<del></del>	
Member: F	Pan Frank MaGuirt			
Michigan I	Rep. Frank McGuirt	<del> </del>		
Total Number of day's (This line MUST be complete		· .		
Arrived the day prior (Claim one day for each meet spending the night prior to th are entitled to an extra day.)	ing day you attended. If	Yes 🗌	No 🗹	
Car Mileage (Fill out this line if mileage is	different than what is certified	on file)		·
Number of Round Tri	ps	***************************************		
		Mark (Membe	7/ Ju r's Signatur	re)
[Must be approved by Chair Senate President Pro Tempor		Rep. D	Eulus.	Sudlems_
House Speaker]		(Approva	al Signature	),
Names of other official le	egislative or state governi	ment meetings at	tended duri	ng this visit:
		ere to equi		
Number of day's subsis	stence claimed for othe	r meeting(s)	_	
Car Mileage claimed fo	or <u>other</u> meeting	Yes	N	10 <u> </u>
Committee Assistant Na	me:James White			Ext.# 3-5935



#### Members' In-State Reimbursement Form

Form: PR008

Administrative Division **Financial Services Section** 

This form is used to request for in-state reimbursement for subsistence and travel for Committee, Commission or Other In-State Meetings/Legislative Business by members.

Rev: 09/2010 Financial Services Use:

**Budget to Charge** 

	LRC Subcommittee on In	ncapacity to Proceed	
(Complete Name of	of Committee or Commiss		leeting/Business)
	•		
Location of Meeting	(City): Raleigh, NC		-90
Date(s) of Meeting:	01-11-2012		
Member:	Rep. John Faircloth		<i>U</i>
Total Number of day (This line MUST be comple	's subsistence claimed		
Arrived the day prio (Claim one day for each me spending the night prior to are entitled to an extra day.	eting day you attended. If the first meeting day, you	Yes No	
Car Mileage (Fill out this line if mileage	is different than what is certified		
Number of Round T	rips		
[Must be approved by Cha Senate President Pro Temp		(Member's Sign	Ludlems
House Speaker]		(Approval Signa	sture)/
Names of other official	legislative or state govern	ment meetings attended	during this visit:
·		··.	
Number of day's sub	sistence claimed for othe	er meeting(s)	
Car Mileage claimed	for <u>other</u> meeting	Yes 🗌	No 🗹
Committee Assistant N	Jame: James White		Ext.# 3-5935



#### Members' In-State Reimbursement Form

Form: PR008

**Budget to Charge** 

Ext.# 3-5935

Administrative Division Financial Services Section

This form is used to request for in-state reimbursement for subsistence and travel for Committee, Commission or Other In-State Meetings/Legislative Business by members.

09/2010 Rev: Financial Services Use:

	LRC Subcommittee on Incapacity to Proceed	
(Complete Name	of Committee or Commission or Description o	
Location of Meeting	g (City): Raleigh, NC	<del></del>
Date(s) of Meeting:	01-11-2012	Par
Member:	Rep. Shirley Randleman	90P7
Total Number of da (This line <u>MUST</u> be comple	y's subsistence claimed	_
	eeting day you attended. If the first meeting day, you	No 🗌
Car Mileage (Fill out this line if mileage	is different than what is certified on file)	Lile
Number of Round T	'rips /	
	Hep- Mu (Member's S	My Sandleme
[Must be approved by Cha Senate President Pro Tem		Illia
House Speaker]	(Approval Si	ignature)
Names of other official	l legislative or state government meetings attend	led during this visit:
Number of day's sub	sistence claimed for other meeting(s)	
Car Mileage claimed	for other meeting Yes	No Д
Committee Assistant 1	Name:James White	Ext.# 3-5935

## **VISITOR REGISTRATION SHEET**

LRC	Subcom	mitte or	n Inca	pacity	to	Procee	ed

01-11-2012

Name of Committee

Date

## VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lu- Ann Comme	Parolina State Strategies
Annaliese polph	DRNC
Skann	OHB
(awl Durin	DSOHF
Andrew Cagle	NC Sheriffs Assoc
Per Dorer	Conf. of D. As
Kimbelg N Overtan	Conference of District Attorneys
Peter STrickland	ASSISTANT DISTRICT ATTORNEY DISTRICT 190
Jayna Shale	Liberty Healthoure.
Nancy Warren	NC Div. of Aging + Adult Sucs.
Argel Gray	NC Dept & Justice
S	

#### **VISITOR REGISTRATION SHEET**

LRC Subcommitte on Incapacity to Proceed 01-11-2012

Name of Committee

**Date** 

## VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
LauraSheras	Central Res Hosp
David Bartholomen	Central Regional Hosp
Mark Botts	School of Coverment, UNC
Dolly Whiteside	Indisent Défense Services
Sovaln Preston	ACW-NC'
Bill lucos	DPS / DAC-HS
Mildred Spearman	NCAOC
Kay Paksoy	NASW-UC
Constege	NMRS
Steve Peters	Cherry Hospital

### General Assembly of North Carolina

# Legislative Research Commission Committee

Incapacity to Proceed

State Legislative Building Raleigh, Porth Carolina



#### **AGENDA**

Wednesday, January 11, 2012 – 2:00 – 5:00 p.m. Legislative Office Building, Room 415

I. Call to order

CHAIR

MEMBERS

REP. JUSTIN P. BURR

REP. PAT B. HURLEY REP. FRANK McGUIRT

REP. JOHN FAIRCLOTH

REP. SHIRLEY B. RANDLEMAN

- II. Introductory remarks by Chair
- III. Presentations
  - A. Case Studies John Rubin, UNC School of Government
    - Misdemeanor Offense
    - Felony Offense
  - B. Agency/Organization Presentations
    - Law Enforcement Andrew Cagle, NC Sheriffs' Association
    - NC Conference of District Attorneys ADA Ray Warburton, District 19B
    - Defense Attorney Staples Hughes, N.C. Appellate Defender
    - Local Forensic Examination Dr. Nancy Laney, Psychologist
    - DHHS Dr. Mark Hazelrigg, Forensic Psychologist, Central Regional Hospital
    - State Forensic Examination Dr. Mark Hazelrigg
    - Attorney General's Office Rich Slipsky, Special Deputy Attorney General
    - Judiciary Hon. Kenneth Titus
    - Patient Advocates
      - o The ARC of NC Julia Adams, Asst. Director of Government Relations
      - o NAMINC Deby Dihoff, M.A., Executive Director
      - Disability Rights North Carolina Corye Dunn
      - O North Carolina Psychiatric Association Peter Barboriak, M.D.
- IV. Committee discussion and announcements
- V. Adjourn

Next meeting: To be determined

SUSAN SITZE
COMMITTEE COUNSEL
545 LEGISLATIVE OFFICE BUILDING
300 NORTH SALISBURY STREET
RALEIGH, NORTH CAROLINA 27603

(919) 733-2578 FAX: (919) 715-5460

JAN PAUL
COMMITTEE COUNSEL

HAL PELL COMMITTEE COUNSEL

SUSAN BARHAM COMMITTEE STAFF

JAMES WHITE COMMITTEE CLERK 300 NORTH SALISBURY STREET ROOM 531 RALEIGH, NC 27601 (919) 715-3021

## Legislative Research Commission Subcommittee on Incapacity to Proceed Meeting Minutes – 01-11-2012

A meeting of the Legislative Research Commission Subcommittee on Incapacity to Proceed was called to order by Representative Shirley Randleman, Chairman, at 2:03 pm on January 11, 2012, in room 415 of the Legislative Office Building.

Members present included Chairman Representative Shirley Randleman, Representative Justin Burr, Representative John Faircloth, Representative Pat Hurley, and Representative Frank McGuirt.

Staff present included NCGA Staff Attorneys Susan Sitze, Jan Paul, and Hal Pell. Also present were Research Assistant Susan Barham and Committee Clerk James White.

Also present at the meeting, and seated around the table, were the following stakeholders and participants: Rich Slipsky – The Attorney General's Office; The Honorable Judge Kenneth Titus; District 19B Assistant District Attorney Ray Warburton – representing the NC Conference of District Attorneys; John Rubin – UNC School of Government; Eddie Caldwell – North Carolina Sheriffs' Association, Staples Hughes – North Carolina Appellate Defender; Julia Adams – The ARC of NC; Dr. Mark Hazelrigg – North Carolina Department of Health and Human Services; Corye Dunn – Disability Rights North Carolina; Robin Huffman , Dr. Nancy Laney, and Dr. Peter Barboriak – North Carolina Psychiatric Association; and Deby Dihoff – NAMI NC.

Chairman Randleman recognized and thanked Bill Bass and Wayne Davis the two Sergeants-at-Arms. The Chair thanked the members and stakeholders for their attendance and the public for interest. Rep. Randleman noted that this is very important issue with many complexities and that all the persons and organizations seated around the table have the resources and expertise to find solutions. The Chair stressed the importance of coming up with a working draft piece of legislation that can proceed through the General Assembly during the 2012 Short Session.

The Chair entertained a motioned to approve the draft text of the minutes from the 11-09-2011 meeting of the Incapacity to Proceed LRC. Representative McGuirt made a motion to approve the minutes as drafted, seconded by Representative Hurley. The Representatives voted and approved the minutes by show of hands.

Chair Randleman recognized John Rubin of the UNC School of Government to present a PowerPoint presentation outlining several case studies misdemeanor and felony offense in relation to incapacity to proceed (see attachment #1). Mr. Rubin was asked to provided concrete illustrations of how the criminal justice system and mental health system deal with defendants who incapable of proceeding.

Mr. Rubin noted that both the mental health and the criminal justice system are involved with the issue at hand, the criminal justice system is involved with the determining of capacity to stand trial and the mental health system is involved if those persons should be involuntarily committed. Mr. Rubin proceeded to explain to the Committee the incapacity and involuntary commitment process and stated that there are factors that play into the process – whether a crime is a misdemeanor or felony, violent or non-violent. He also mentioned the difference of fewer resources, law enforcement officers, examiners, and treatment providers between rural and urban county. Rural communities may also not hold court as many times in a period of time as urban counties; however, that may be offset by fewer cases in the rural counties. Mr. Rubin noted several adverse impacts of the issues of "ping pong" individuals that

were outlined in his presentation – delays in resolving criminal cases, transaction costs for the system, multiple examinations, law enforcement transportation, and potentially adverse impacts on the mental health of the persons involved. Some ways to address the issues of the incapacity process issue – an argument not to contest continued commitment on the commitment side of the process or outpatient commitment and persons are not held in a hospital or jail. As for the issue of someone who is unlikely to ever have the capacity to defend against the criminal charges, while the criminal charges are pending, it can be difficult to find placement for people in outpatient services or voluntary treatment facilities and funding for those services.

Chair Randleman opened the floor for questions and comments. Chair Randleman asked about local exams and who is qualified to provide those. Mr. Slipsky provided the answer that it is outlined in administrative code. Rep. Randleman asked about the timeframe time for the report from the regional hospital to the county. Mr. Rubin noted that there is no statutory specification but more a matter of practice and that the experts from DHHS would be better to answer those questions. Mr. Rubin did note that the statutes do outline a time limit of 60 days for capacity evaluation at the state facilities. Rep. Randleman asked about the procedure after release back to jail and thereafter. Mr. Rubin stated that he is not sure if there is a uniform way that that process is dealt with - he suspected that defense counsel would learn that their client is back in jail, determine their mental health, prosecutor may place that matter back on the calendar, and the case would move forward if that person is found capable. However, if the person has decompensated, then a new motion could be brought up to determine capacity. As for dismissal, a prosecutor may dismiss the case, dismissal with leave (criminal charges remain pending), the court also has the discretion under the statues to dismiss. Chair Randleman followed up by asking if there would be some point when that individual would have to go back to Central Regional Hospital for more determinations of capacity. Mr. Rubin said the process is more the reverse because there is a presumption that the person is ready to proceed unless it is brought to the attention of the court that this person is not ready to proceed, and then they are brought back through the process again. A person does not automatically go back to Central Regional Hospital for determination. Mr. Slipsky also provided an answer by stating that there were two ways for a patient to end up back in jail – district court or hospital concludes that that person has been restored. In the case of the latter, under GS 15A-1006 the hospital will notify the clerk of such and a hearing is scheduled on that person's possible restoration. Mr. Rubin agreed with Mr. Slipsky but noted that he would be surprised if the notice on the restoration actually happened that frequently in practice. Hospitals often don't have staff that deal with capacity issues. Dr. Hazelrigg added that the Department of Health and Human Services has a well-established practice of the treatment units at the various hospitals making referrals back to Central Regional Hospital for evaluation triggering notification to the courts when someone has reached a capacity point. The Doctor also noted that that in many cases persons go from directly from the treatment unit to central regional and not to court.

Chair Randleman recognized Eddie Caldwell of the North Carolina Sheriffs' Association (NCSA) to present on how these topics impact his association.

Mr. Caldwell stated the association does not have an official position or any recommendation on what the legislature should do to address the issue, other than to find something because it is not a good situation for law enforcement and defendants. The county jails end up being the catchall for persons who are incapable. Those persons often get worse while in jail and may benefit and move more towards becoming restored if they were somewhere else. Mr. Caldwell has found that process is implemented differently from county to county and described the basic process of being found incapable to proceed. He noted that the process is seemingly haphazard, becomes lengthy, and that the jails do not receive

official notification of the results from tests done at Central Regional Hospital and are unaware if that person if capable or not. Mr. Caldwell stated that he has been told that the official notice from the hospital does not come to the jails, but at some point they receive unofficial notice and then the process continues with movement of the individual to Broughton Hospital. Mr. Caldwell stated that something should be changed in the process so that the Sheriff of the county is notified. This will expedite the process by allowing the staff to evaluate who does not need to be in the facility and have those individuals transported to the appropriate facilities. After speaking with a number of the Sheriffs, Mr. Caldwell noted that criminals are at Central Prison and not Central Regional Hospital as safekeepers. A safekeeper is a person who is sent to Central Prison by a county jail for a variety of circumstances and cannot be controlled by the jail due to the conduct of that inmate. The reports are that those persons stay at the prison much longer than is reasonable if that person needed mental health evaluation and treatment. This is a problem because the conduct at the jail necessitates the designation as safekeeper, but those persons may fall of the radar and may actually need to be evaluated for mental health and they are not in need of incarceration but mental treatment. Mr. Caldwell also mentioned the irony of incapable of standing trial but not suitable for involuntary commitment, and that those persons may not have anywhere to go but to remain in the jails. The Sheriffs are always focused on those who do not need to be in the jails and how to get them out or to the place that is more appropriate for them streamlining the situation may benefit the Sheriffs. There was an outstanding question from Mr. Caldwell on how long it takes for the court to determine that someone who is in the jail needs to undergo incapacity evaluations and if there was a way expedite the process - could there be a screening process for those persons entering the jail system? Mr. Caldwell noted that the delay rests in determining for testing and not in the order of the test from the county and the performance of the tests by the mental health hospitals. Furthermore, he added that there remains a concern over a person returning to the jail who is found capable to proceed but then the person regresses because the jail environment is not the suitable place to await trail (resulting in them becoming incapable again). Should those persons be held in a facility that can provide services and treatment to maintain their level of capacity?

Mr. Caldwell then went on to answer several questions the Chair asked the Association to address at the last meeting. What jails have the ability to hold a person who is deemed incapable – almost all of them can hold but almost none can provide treatment. How many people who are incapable to proceed are in a jail on any given day – the sheriffs have no way calculating those numbers. However, they found that jails are having trouble with persons who are incapable on a jail's roster but currently in a hospital facility (concurrently on that facility's roster).

Chair Randleman opened the floor for questions and comments. Representative Hurley asked how many deputies travel with an individual who is being transported to a hospital facility. Mr. Caldwell said there is no statutory requirement. Typically it is one, depending on the behavior. Representative Hurley followed-up with a question on if there are any statistics on how many are being transported that are incapable or are being involuntarily committed. Mr. Caldwell said that those statistics were not known by the NCSA.

Chair Randleman recognized Assistant District Attorney Ray Warburton in District in 19B to speak on behalf of the North Carolina Conference of District Attorneys.

Mr. Warburton provided some details on the topic. First, how do the district attorneys know to send someone off for evaluation – defense counsel brings it to their attention, the jail will say that someone's conduct is terrible or the judge may issue evaluations in certain circumstances. He agreed the NCSA that

the time-frame between the call from the jail to the hospital for evaluation is fairly quick, with reports coming back to the district attorney within a month or two (that is how they are notified). According to statute, once the report is filed from Central Regional Hospital, the report is sent to the court, DA's Office, and defense counsel's office and the case is scheduled for hearing – the judge must make findings of fact to proceed. Report is used as a judicial notice or as findings. The judge must make findings of facts that the individual is capable or not of proceeding. If found incapable, the court can have a hearing or the option to subpoena the doctors. Mr. Warburton stated that there are two options at the point of hearing – dismiss case (with possibility of reinstatement at another point) or voluntary dismissal with leave (the case is placed on hold) (VL). Mr. Warburton also presented the five observations he has compiled during his time as an ADA; stating that the biggest concerns from his office is number three on his list (see attachment #2).

Rep. Randleman opened the floor for questions and comments.

Dr. Peter Baboriak addressed the issues of persons leaving Central Regional and gong to a secondary offsite facility. He noted that those persons are not discharged from the hospital but are under temporary placement, and they would not be discharged transferred until the legal situation is resolved. Mr. Warburton emphasized that the problem still remains that they are having trouble tracking and getting notification on their status (cases lasting several years lingering). Dr. Barboriak stated that notices are supposed to be sent out when patients receive new hearings at the hospital. Mr. Warburton said that his office receive the initial hearing notification but not the later hearings. Hall Pell, NCGA Staff Attorney, asked a question about NC G.S. 15A-1002, point number two on Mr. Warburton's Handout (see attachment #2). Mr. Pell asked Mr. Warburton if currently they have discretion to do testing, and should it be required? Mr. Warburton agreed – and emphasized that it would be for individuals who do not have a background of mental illness. A majority of the tests should be required with the exception for persons with extensive backgrounds and issues. Jan Paul, NCGA Staff Attorney, asked if tracking was referring to patients who have been subsequently committed, because if the case has been dismissed, then what jurisdiction would the court have to order or require monitoring. Mr. Warburton stated that if the case is not dismissed then jurisdiction remains; but that concern may need to be addressed. Representative Faircloth asked if there were any privacy restrictions in the communication process. Mr. Warburton commented on the fact that sometimes a court order is needed in order for the DA's Office to obtain information; but, the tracking of the cases may have privacy issues because of private entities working with Central Regional Hospital. Mr. Slipsky commented on the privacy issue by stating that he did not see any privacy issues within the criminal justice system unless intimate details are requested, but tracking was not a concern for privacy. Dr. Nancy Laney noted that the Hospital only has an obligation to disseminate to specific destinations (court, DA, defense counsel). Eddie Caldwell, NCSA, noted that adding the Sheriff to the list may be helpful

Chair Randleman recognized Mr. Staples Hughes, Appellate Defenders Office, to present the position of the North Carolina Advocates for Justice (see attachment #3).

Mr. Hughes noted that to deal with the situation is going to cost a lot of money. He noted that communication is essential in many of these circumstances, specifically in non-serious cases. The violent cases are a situation that need to be addressed because the possibility of persons bouncing back-and-fourth between facilities in a rotating cycle. Mr. Hughes stated that at some point in the rotating cycle it may become very clear that a person will never be able to proceed – and proposed specific changes to G.S. 15A 1008 and 1009 (see attachment #3). Mr. Hughes stated that the reason for deleting G.S. 15A-1009 is because it is hard to place people with pending charges in appropriate facilities. He also noted

that adaption of existing facilities must include people who are trained and are prepared and forensic evaluation examination functions being spread to the three major hospitals with full funding by the General Assembly.

Chair Randleman opened the floor comments and questions.

Mr. Warburton commented on the fact that he believes that once a case has been dismissed by a judge then the state cannot bring it back again. Mr. Hughes said that he felt that was incorrect and that he did not know of any legal impediment. Mr. Pell noted that within G.S. 15A-1009 dismissal with leave entered under that section is no longer if the court later dismisses it under G.S. 15A-1008, and he felt that it may be helpful to have it made clearer that, by operation of law, dismissal for this reason allows re-filing by the state. Mr. Hughes agreed and added that it is still going to be hard for doctors at Central Regional Hospital to complete their duties if charges are pending. The Chair recognized Dr. Laney who asked if Mr. Hughes meant that this entire situation is hinging on the declaration of someone as non-restorable. Mr. Hughes agreed. Mr. Warburton expressed concern on the matter of dismissal and tracking issues if someone is moved to an outpatient facility because they do not have any lingering charges, and how do does the DA's Office know if they are capable to proceed. Mr. Hughes noted the hesitancy of judges and the DA to dismiss charges for a variety of reasons – and agreed that monitoring would be limited.

Chair Randleman recognized Dr. Nancy Laney to present on behalf of the North Carolina Physiologic Association (see attachment #4)

Chair Randleman asked Dr. Laney if she had an idea on the percentage of local screening reports are used in the courts and referred to Central Regional Hospital. Dr. Laney said that data for answering that question is unavailable – noting that fifty percent of evaluations at Central are screening evaluations, but she has no idea of the percentage of re-referral.

Chair Randleman opened up the floor for comments and questions.

Dr. Barboriak wanted to clarify that twenty percent of the 1,000 court orders they received last year, that were requesting a forensic evaluation at Central Regional Hospital, mention having a local screening already completed. Dr. Laney followed-up by stating that sometimes that information is detailed and other times it is not.

Chair Randleman recognized on Dr. Mark Hazelrigg to speak on behalf of the North Carolina Department of Health and Human Services.

Dr. Hazelrigg detailed the current forensic evaluation process (see attachment #5). Dr. Hazelrigg went on to address some comments by Assistant District Attorney Ray Warburton — he noted that Mr. Warburton had mentioned that it would be beneficial for evaluators to have access to many pieces of information (mental health treatment, criminal background, jail records, indictments, and police investigative reports) and Dr. Hazelrigg agreed that DHHS would like those things, too. Dr. Hazelrigg did not think that there were any barriers to them receiving that information. Additionally, Dr. Hazelrigg stated that Central Regional Hospital tests for malingering situations frequently, but not in every case — at the discretion of the evaluator.

Chair Randleman asked if members had any questions on the evaluation process.

Representative Faircloth asked what the nature of the offense had to do with the competency to proceed to trial. Dr. Hazelrigg answered by stating that the nature of the evidence, the amount of evidence, details surrounding the incident, and overall information and complexity play a large role — nature of the offense can help Central predict the complexity of the case, and ability of the individual to participate in the defense and standard for being capable is higher. Representative Faircloth followed-up by asking if the capacity to understand and participate in a trial varies with the degree and complexity of the charge. Dr. Hazelrigg agreed. Mr. Staples Hughes asked what the percentage of the evaluations sent to Central Regional Hospital involve the defendant staying at the facility for more than a day or two. Dr. Hazelrigg answered by stating that approximately eighty percent of evaluations are done with outpatient interviews and twenty percent done as in hospital evaluations.

Dr. Hazelrigg continued the presentation by addressing treatment for restoration of capacity (see attachment #5); and emphasized one the biggest concerns right now is the different standards for capacity to proceed and involuntary commitment to treatment. Dr. Hazelrigg added that part of the treatment should be to restore someone's capacity to proceed, and that should be stated explicitly as a goal of the hospital. Dr. Hazelrigg also noted that another issue that needs to be address is when a defendant is treated and improves and no longer meets commitment criteria. Before that individual can be seen at the forensic unit for more evaluation, the defendant is then back in jail and Dr. Hazelrigg stated that no one knows the individual's actual capacity – creating a problem because no one knows what to do from that point onward. Dr. Hazelrigg noted that some process needs to be in place to allow for the forensic unit to re-evaluate an individual's capacity before they are sent back the jail facilities. Dr. Hazelrigg agreed with Mr. Hughes regarding persons who are not capable and not likely to ever be restored –disposing of the charges may be best, specifically with low level felony and misdemeanor offenses.

Chair Randleman opened the floor for questions and comments.

Representative Faircloth inquired on the Crisis Intervention Teams (CIT) (see attachment #5) by asking how extensive the CIT training is for police officers. Dr. Hazelrigg responded by stating he did not know the specifics, but it was extensive.

Representative McGuirt asked about the history and status of mental health courts in North Carolina. Dr. Hazelrigg responded by staying that NC has, one in Orange County, one in the North Western portion of the state, and a third court in Winston-Salem. Representative McGuirt followed-up by asking if the courts are in session regularly. Dr. Hazelrigg noted that the court in Orange County does have an active caseload.

Mrs. Susan Sitze, NCGA Staff, stated that the current dismissal statute allows the dismissal on the expiration of five years on the date of the termination but does not require that they are hospitalized for those years and what did he suggest for those who have not been hospitalized. Dr. Hazelrigg felt that most persons were most likely institutionalized to some degree but are not out on bond or in another situation. Mrs. Sitze noted that notice of the status of some defendants may not be possible because those persons are not receiving treatment. Dr. Hazelrigg stated that from his prospective that the violent crime defendants always have detainers placed on them and they cannot be discharged except to the custody to the Sheriff and should not be lost in the system – allowing for tracking. Mrs. Sitze asked who would report the findings of a person in a dismissal situation if someone is not committed. Not having an answer, Dr. Hazelrigg deferred to Richard Slipsky of the Attorney General's Office. Mr.

Slipsky noted that person could be followed in the community via the court system and the outpatient mental health treatment.

Chair Randleman recognized Richard Slipsky to present the position of the North Carolina Attorney General's Office.

Mr. Slipsky noted that the job of the Attorney General's Office is to make certain that all cases have been handled in compliance with the law, and their constituents are the District Attorneys, the patient's lawyers, judges, and the staff at the state hospitals. Mr. Slipsky stated that the crux of the problem lies in the fact that requirements have to be met for both incapacity and involuntary commitment; but, the merger is required by the constitution (Supreme Court Case of Jackson V. Indiana). He stated that the job of the committee should be to keep individuals from bouncing back and forth too much; however, eliminating the back and forth will be impossible. Mr. Slipsky informed the committee that an Assistant Attorney General is stationed at each of the state hospitals, and questions that are unable to be answered by them are sent to Raleigh and Mr. Slipsky's staff. Mr. Slipky also noted that the AG's Office also deals with orders from judges that may be unconstitutional. He also noted that one of the recommendations of his office is to have the ultimate goal of the hospitals be a person's release— a treatment goal and restoration of competency. Mr. Slipsky mentioned that pending charges impact a person's ability to receive some disability benefits and that tends to be detrimental. He went on to say that people in these situations may benefit from placement facilities - foster homes and supported housing. Furthermore, Mr. Slipsky suggested that the committee look for a way to establish consequences for continuing to hold a person in a hospital who may not need to be in that facility monetary charges for hospitalization charged to criminal justice system. He also suggested that the judge take evidence on a person's restoration instead of allowing prosecution and defense to stipulate that an individual is not restored.

Chair Randleman opened the floor for comments and questions.

Assistant District Attorney Ray Warburton asked if outpatient commitments are provided by private entities or the government. Mr. Slipsky responded that private providers can be found, but currently they are provided by the LME. Mr. Warburton followed-up by asking if privacy issues are a concern if the entities are private. Mr. Slipsky responded by stating the laws under G.S. 122C do not stipulate state agency or not and apply to all facilities – state, county, and private providers.

Chair Randleman recognized Judge Titus to speak on behalf of the judiciary.

Judge Titus noted that matters within the incapacity proceedings do not occur in logical fashion. The Judge explained that the jail is usually the initiator; they contact the defense attorney – who interviews the client in jail – an order is received from the court, order is processed by the jail and Central Regional is contacted—an evaluation appointment must be made— individual needs to be transported by the Sheriff and have the evaluation done. If the report notes that the individual is incompetent to proceed, then the defense attorney needs an evaluation from Central. If the person is deemed to have capacity to proceed to trial, the defense attorney may ask the court to provide the funds to allow for an independent evaluation from some entity other than Central. When the reports are finally received, then a hearing must be scheduled before the court —many counties do not have superior court session every week and some counties have session of superior court multiple times a week and it is hard to get on the schedule. The Judge noted that the speed of the process is often is bogged down by many factors — availably of the assistant district attorney, the public defender, the defense attorney, and availability

of court time. The judge noted the training, coordination, communication between the agencies, and accountability are issues that must be looked at for betterment of the incapacity process. There is no time limit on any of the proceedings and that should be addressed. The Judge also noted that dismissals can happen but judges stand in the way. The judge recommended mandating training for defense attorneys, prosecutors, and judges. The judge also recommended looking at evaluations of capacity at Central before the person may end up back in the jail and decomposing.

Chair Randleman opened the floor for comments and questions.

Jan Paul, NCGA Staff, asked if the court had jurisdiction to mandate follow-up reports in certain dismissed cases and if that would be problematic. Judge Titus agreed that it would be problematic. He added that he personally knows many judges who would not allow for a case to be brought back up again if that case was previously dismissed.

Chair Randleman recognized Julia Adams to speak on behalf of the ARC of North Carolina.

Julia Adams informed the committee on the definition of intellectual disability (see attachment #6). Mrs. Adams noted that people with intellectual disabilities will most likely never be found capable to proceed in a court system because persons with an extremely low IQs will not function higher than that. She also presented a case of importance that reflects in revolving door problem as related to incapacity to proceed (see attachment #7). She also noted that many professionals are not trained and do not have the skills to identify and treat intellectual disabilities - further noting that the forensic units in the mental health system are not the best place for persons with such disabilities (currently the default). Ms. Adams suggested that those individuals need a facility to receive the specialized treatment that is required. She also noted that housing is vacant and available in the state, but there is no statewide system used to identify those resources. Ms. Adams went on to inform the committee on the transitional problems for people with intellectual and developmental disabilities - movement from the justice system to the mental health system. More training may need to available for sheriffs' offices on how to transport, cue, and correctly inform persons transitioning to and from justice and health systems. Ms. Adams also expressed concern from the ARC of NC on the length of time individuals may stay in the system and the facilities; and finished by stating that persons who are incapable to proceed. and who have a very low IQ, need to have the charges against them dropped and moved through the justice system quickly because they will never reach capacity.

Chair Randleman opened the floor for comments and questions. There were no questions or comments for Mrs. Adams.

Chair Randleman recognized Deby Dihoff of the National Alliance on Mental Illness of North Carolina (NAMI NC). Deby Dihoff presented the position of NAMI NC (see attachment #8).

Chair Randleman asked the committee if there were any questions for Mrs. Dihoff. There were no questions or comments at that time.

Chair Randleman recognized Corye Dunn to speak on behalf of Disability Rights of North Carolina (DRNC).

Ms. Dunn presented the viewpoints of DRNC (see attachment #9).

Chair Randleman asked if the committee had any questions for Ms. Dunn. There were no questions at that time. Chair Randleman asked about the office of the public guardian and if this would mean a large numbers of person with criminal charges being committed. Ms. Dunn agreed and added that not all of them would but certainly some. The Chair noted that the suggestions for the public guardian were larger than the scope of Incapacity to Proceed LRC Subcommittee, and Ms. Dunn agreed.

Chair Randleman recognized Dr. Peter Barboriak on behalf of the North Carolina Psychiatric Association (see attachment #10)

Chair Randleman asked the committee if there were any questions for Dr. Barboriak. Representative Faircloth asked the Dr. Barboriak to comment on patients and substance abuse. Dr. Barboriak noted that it is a problem, the issue being mental deficits that may be long range. Those deficits can last months and complicate the issue.

Chair Randleman asked that committee members review the handouts and send an electronic mail with suggestions for draft legislation for the next meeting.

Chair Randleman gave notice of the next meeting on February 8<sup>th</sup> at 2:00 pm, room 415 LOB.

There being no further business, the meeting of the Legislative Research Commission Subcommittee on Incapacity to Proceed was adjourned at 6:45 PM.

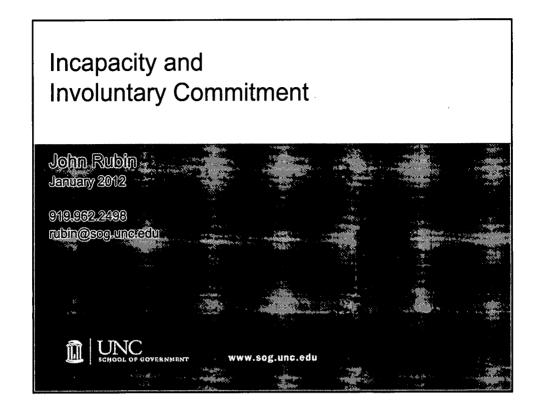
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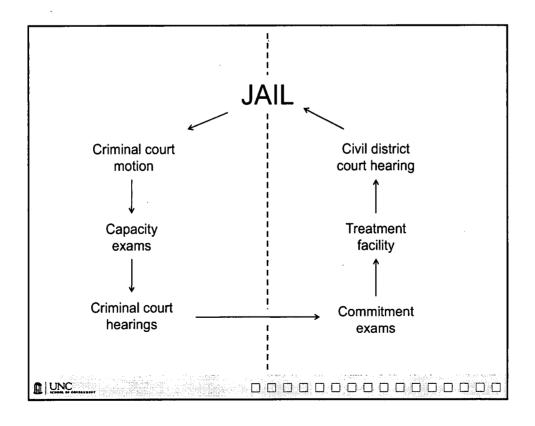
Representative Shirley Randleman, Chair

James White, Committee Clerk

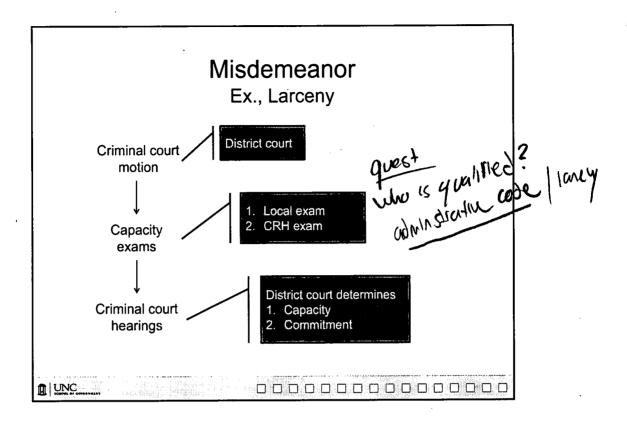
### Attachment #1 Incapacity and Involuntary Commitment John Rubin

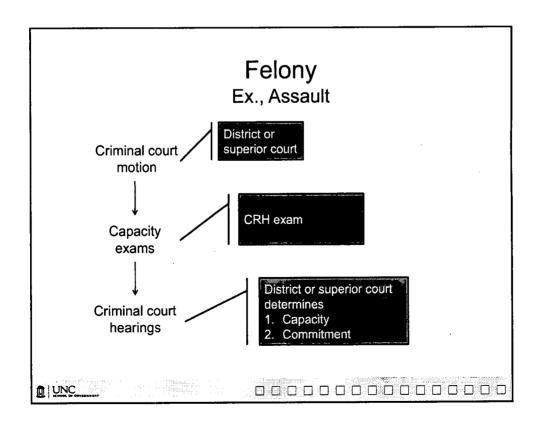
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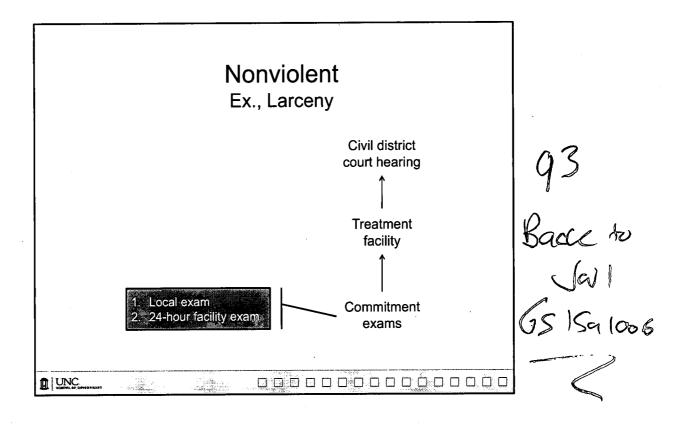


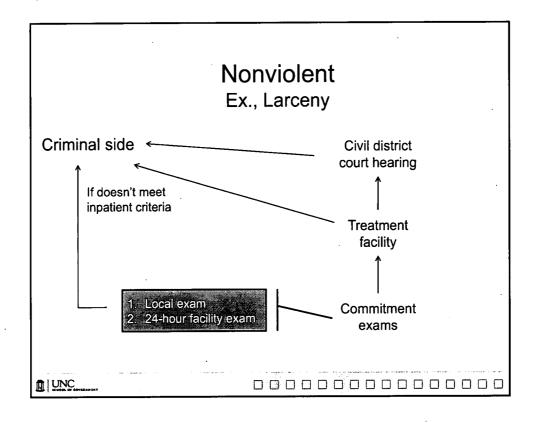




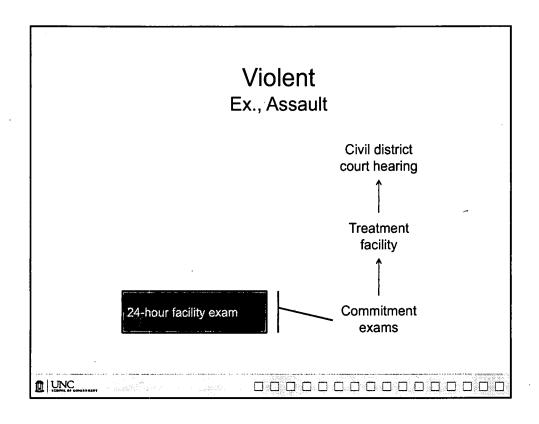


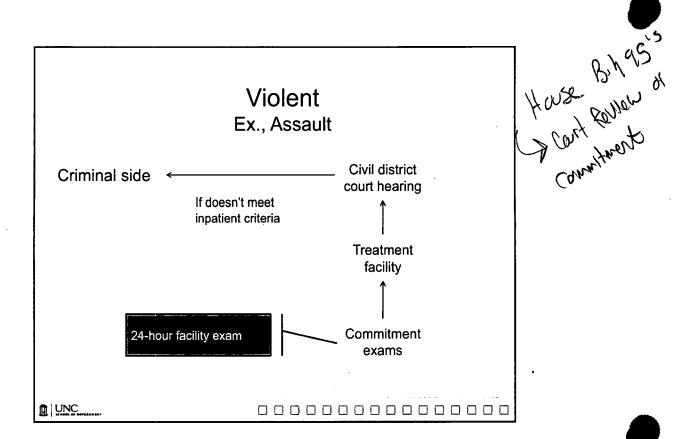










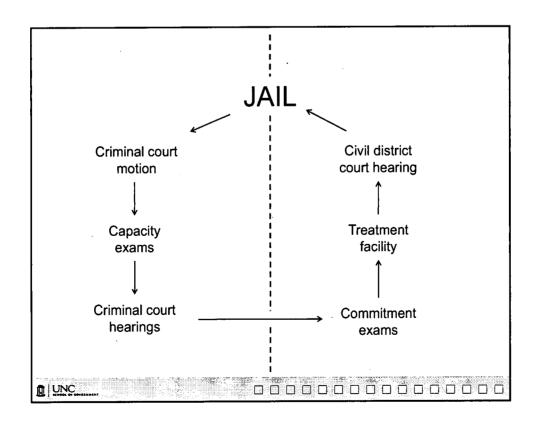




### Two Issues

- Someone who moves back and forth between the criminal justice and mental health systems
  - Found incapable
  - Committed
  - Released from commitment
  - Found incapable
  - Committed, etc.

- Someone who is unlikely ever to have the capacity to defend against the criminal charges
  - Mental retardation
  - Dementia
  - Other conditions





# Attachment #2 Agency Comments District Attorney's Office Perspective Raymond Warburton, ADA, 19B

### AGENCY COMMENTS DISTRICT ATTORNEY'S OFFICE PERSPECTIVE

January 11, 2012 Raymond Warburton, Assistant District Attorney, 19B

- 1. <u>Forensic Evaluation Documents Reviewed</u>: The initial evaluation needs to include more than the standard referenced in the 122C-263(c). In addition to the review of defendant's mental health treatment records, if any, the evaluation should also require a review of the (a) Law Enforcement Investigative report, (b) Jail/DOC pre-trial records, (c) medical treatment records following arrest, and (d) criminal clerk's file where charge(s) are pending.
- 2. Forensic Evaluation Observation Period: 15A-1002(b)(2) provides for a maximum period of 60 days to observe defendant but does not state a minimum period. A minimum period of days needs to be set for observation as part of the evaluation. During this period a malingering test/process should also be required to be administered to gauge accuracy of defendant's behavior and responses and specific competency screening instruments/ tests should also be required to assess competency to stand trial and the defendant's lack of cooperation should also be considered.
- 3. <u>Tracking/ Placement of Defendant After Finding Incapable to Proceed</u>: Once the defendant is found incapable and ordered to be involuntarily committed to a state hospital they may be sent to an off-site location before capacity to proceed is re-stored. Our office is sometimes restricted in obtaining information on the location of the defendant due to medical/ mental health privacy issues. The concern is the defendant being placed in a treatment environment that is not a secured facility with criminal charges still outstanding.
- 4. <u>Update of Defendant's Mental Health Status</u>: A mandatory review process should be established that would provide a written report every six months to the Court, DA Office and Defense Counsel covering the defendant's progress, or lack of progress, in terms of capacity. A mandatory hearing similar to the Forensic Evaluation Hearing should be held in the offending county every year or two to determine the defendant's current capacity to proceed up to the maximum times designated in 15A-1008.
- 5. <u>Criminal Incapacity to Proceed Statute Self-Contained</u>: Add sections to Article 56 (15A-1001 to 1009) that makes the procedure for a defendant's incapacity to proceed with criminal charges all inclusive in these sections. Currently the criminal statutes refer to the Civil Involuntary Commitment sections (122C-261 to 277) and vice versa making it confusing. The reason why the defendant is being committed is different for civil versus criminal and the corresponding guidelines in each statute creates confusion for all parties. It should also be noted that felony criminal charges have gone through a judicial review by a magistrate and/ or a grand jury, who found probable cause exists that crime has been committed and that the defendant is the one who committed the crime.

# Attachment #3 Memorandum to the LRC Committee in Incapacity to Proceed Staples Hughes, Appellate Defender

Memorandum to the LRC Committee on Incapacity to Proceed From Staples Hughes, Appellate Defender, Representing
The North Carolina Advocates for Justice
For the Committee Meeting of January 11, 2012

#### **SUMMARY**

NCAJ's primary interest with regard to this Committee's mission is protecting the rights of the defendant whose capacity to proceed is questioned and who repeatedly cycles between the county jail and the state mental health hospital. The danger is that the defendant will never receive a placement appropriate to his needs and society's interests.

The current economy makes it unlikely that there will be an immediate expansion of appropriate placements for criminal defendants found incapable of proceeding, whether subject to involuntary commitment or not.

Given this reality, a viable strategy for incremental positive change is to modify statutes (1) to facilitate dismissal of pending charges when the defendant will not regain capacity, and (2) to remove the emotional pressure on prosecutors and judges to maintain prosecutions when a trial or plea hearing will never be possible.

Expansion of forensic evaluation facilities may be a way to cut costs, but whether expansion is a cost-effective alternative is a question that can and must be empirically answered before fully-funded expansion is mandated.

#### STATEMENT OF INTEREST

The North Carolina Advocates for Justice is a professional organization of more than 3,500 North Carolina lawyers whose practices focus on protecting the rights of individual plaintiffs in the civil courts and the rights of persons charged with crimes. NCAJ has membership sections that are directly concerned with the rights of the criminal defendant whose capacity to proceed is questioned or who is involuntarily committed during or following criminal prosecution. NCAJ's Criminal Defense Section is composed of more than 850 lawyers; other NCAJ sections with interests in this Committee's mission include the Civil Rights Section, the Disability Advocacy Section, and the Public Defender/Legal Aid Division.

#### **GENERAL OBSERVATIONS**

- 1. The procedures by which persons charged with crimes are determined to be capable of proceeding or are involuntarily committed are legally and operationally complex.
- 2. It is settled law that persons who are incapable of proceeding, who will never be capable of proceeding, and who do not meet the criteria for involuntary commitment must be released from custody. <u>Jackson v. Indiana</u>, 406 U.S. 715 (1972).
- 3. Confinement of involuntarily committed persons, and appropriate placement of persons who are incapable of proceeding are expensive.
- 4. Mentally ill persons tend to get worse in jail. Floridly psychotic persons confined in county jails are sent to Central Regional Hospital.
- 5. There is a scarcity of dispositional alternatives for persons who will never regain capacity. The discharge system at Central Regional Hospital results in the placement of many of these persons; those who cannot be placed are eventually released into their home communities with no support.
- 6. Given the current economy, immediate large scale expansion of appropriate placements for criminal defendants who are found incapable of proceeding is probably an unrealistic goal. As in any sphere, litigation may alter the situation.
- 7. Organizations that provide placement alternatives regard pending charges and the dismissal of charges with leave to reprosecute as equivalent. Pending charges are a significant impediment to placement of some persons who are incapable of proceeding and who do not meet the criteria for involuntary commitment. Placement is impeded for two reasons:
  - A. Eligibility for funding is affected.
  - B. Institutions are reluctant to accept placement of persons who have pending charges.
- 8. Making appropriate placement difficult is contrary to the public's interest in controlling criminal behavior. If Central Regional Hospital cannot pursue a placement for a person found incapable of proceeding because charges are pending, that person will be returned to jail. He either will bounce back to Central Regional if he again becomes floridly psychotic, or will be released into the community without an appropriate placement. He is more likely to reoffend when an appropriate placement is not utilized.

- 9. Serious charges distort decision-making when medical opinion is that a defendant is incapable of proceeding.
- 10. Incremental positive change can be accomplished by amending statutes (1) to eliminate dismissal with leave to reprosecute, and (2) to set an outside limit for the period of time a person found incapable of proceeding can be remained charged. Specific suggested amendments are set out below.
- 11. Involuntary commitment following dismissal of charges is an alternative where the prosecutor or a judge believes that the defendant is mentally ill and dangerous to himself or others.
- 12. If existing facilities designed for other purposes are utilized to confine defendants found incapable of proceeding, those facilities must be modified to help those defendants regain capacity or to contain them in circumstances akin to those at Central Regional Hospital for persons who are subject to long-term civil commitment.
- 13. One way to reduce the inherently high costs of evaluation for capacity to proceed may be to expand the forensic evaluation function beyond Central Regional Hospital to the other two major state mental hospitals. The question of whether it is more cost-effective to transport defendants to one central location or to spread the function geographically is an issue that can be addressed empirically. An expansion cannot be accomplished without answering the empirical question and without adequately funding the expansion. Attempting an unfunded expansion may well lead to inaccurate evaluations which will prolong inappropriate incarceration in local jails and lead to increased cycling between jail and the state hospitals.

#### SPECIFIC SUGGESTED AMENDMENTS TO EXISTING STATUTES

§ 15A-1008. Dismissal of charges

When a defendant lacks capacity to proceed, the court may must 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 to which the defendant could have been sentenced for the most serious crime or erimes with which he was charged at the top of the aggravated range of punishments permitted at his prior record level per Part 2, Article 81B of this

Chapter, or for misdemeanor offenses, the maximum sentence for the most serious misdemeanors at his prior conviction level per Part 3, Article 81B of this Chapter (the maximum period for felony or misdemeanor offenses committed before the effective date of Article 81B being governed by the provisions of Article 81B); 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 <u>G.S. 15A-1008</u>, 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 <u>G.S. 15A-1008</u>.
- (f) Nothing in this section shall limit or prohibit the court from dismissing criminal charges pursuant to <u>G.S. 15A-1008</u> upon motion by the defendant or upon the court's own motion.

# Attachment #4 NCPA's Role or Interest in CTP/Involuntary Commitment Process Nancy Laney, Ph.D., C.R.C

#### Nancy Laney, Ph.D., C.R.C., NCPA representative

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#### NCPA's role or interest in CTP/Involuntary Commitment Process

Psychologists, particularly forensic psychologists, have specialized knowledge, training, and experience addressing this area of practice and are employed as private and public practitioners like myself.

Statute in effect to reduce costs of transportation and hospitalization:

In 1982, NC Legislature passed a revision of the laws governing capacity to proceed to trial for criminal defendants charged with a <u>misdemeanor</u> to obtain evaluations from "forensic evaluators approved under rules of the Commission for Mental health, Developmental Disabilities, and Substance Abuse Services (10 NCAC 18F Rules .0115 through .0122) before sending them to the Pretrial Unit.

The current law was revised in 1995 and judges are given the option of ordering a forensic screening evaluation as a first step even for defendants with a <u>felony</u>.

The area programs are now mandated by (NCAC 14V .6702 effective May 1996) to provide the courts with forensic screenings and evaluations by certified forensic screeners.

- Approximately 850 screenings done per year statewide. (PTU does 1000 evaluations per year).
- All LMEs contract for screeners.
- As of 01/06/12 = 222 certified screeners.
- \$100 per screening (contracted rate).
- Local forensic screeners have Bachelors, Masters, or Doctorates with varying amounts of experiences.
- Training is one day (6hrs) at CRH and a proficiency test by Dr. Hattem.
- Trainings are offered twice a year.
- Screeners do CST only, not MSO.
- Screeners are supposed to offer opinions on obvious cases. If in doubt, they refer to Pretrial Unit at CRH.

#### **Problems:**

- 6 hrs of training not adequate for proficiency in forensic evaluation, even on screening level
- Variable quality between screener reports/opinions
- Once certified, there is no provision for reviewing the quality of the screener's work
- There is no refresher, continued or "advanced" training
- Attorneys and judges don't always trust screeners' opinions and refer to PTU even if an opinion was offered
- LMEs are supposed to report basic screening activity data but their reporting is very variable and often incomplete.

#### **Possible Solutions:**

- If we continue with screeners, consider more oversight by increasing education and training and peer review for screeners.
- If not, seek forensically trained doctoral level psychologists in certain locations in other areas of the state to conduct same day forensic evaluations. Continue to schedule inpatient evaluations at CRH.
- Create a shared database for LME and CRH to track screening information.

## Attachment #5 Forensic Evaluation and Treatment in NC Mark Hazelrigg, Ph.D

#### FORENSIC EVALUATION AND TREATMENT IN NC Mark Hazelrigg, Ph.D. DHHS Central Regional Hospital

January 11, 2012

#### **CURRENT FORENSIC EVALUATION PROCESS:**

**Court Order.** A Motion for evaluation can be initiated by the Defense Attorney (most frequent), District Attorney, or the Judge.

**Initial Assignment.** The case is assigned to an evaluator, often depending on specialized skills. Difficult and complex cases are done as inpatients. Most are done as outpatients.

**Scheduling.** A date is determined for the initial interview or admission to the inpatient unit. Additional appointments may be needed for more interviewing or psychological testing.

**Evaluation.** The actual evaluation involves interviewing, testing, interviews with other sources (family, attorneys, etc.), and review of records.

**Report.** A report is prepared, offering an opinion on Capacity to Proceed and explaining the basis for the opinion. The report is sent to the Judge, defense attorney, and District Attorney (unless ordered otherwise).

**Testimony.** In many cases, the evaluator will need to testify in court to explain the opinion in more detail and to address concerns expressed by other experts.

#### Treatment for Restoration of Capacity

At present, there is no provision in the statutes that requires treatment of Incapable To Proceed (ITP) patients to include specific programming to restore their Capacity To Proceed. Standard psychiatric treatment may often be sufficient, but focused training, education, and practice would address the patients' need to progress toward that specific goal. The commitments of ITP patients should include direct language requiring the facilities to provide specific services aimed at restoring Capacity To Proceed, as determined by the needs of each patient. Educational programming about the court system could be standardized across the three hospitals to make the restoration process more consistent.

#### Re-evaluation

Following a period of treatment, with demonstrable improvement in ITP Patients' conditions, those patients should not be discharged prior to an assessment to determine if their Capacity To Proceed has been restored. This will prevent the confusing situation of discharging of patients back to jails and courts, without the court knowing if they can proceed or not. The re-evaluation of these patients should not be done by the current treatment team, but by an objective evaluator, preferably the evaluator who originally concluded the defendant was Incapable To Proceed.

#### GS 15A-1008

Currently, GS 15A-1008 allows for the dismissal of charges under certain circumstances:

§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. (1973, c. 1286, s. 1.)

**Note:** In practice, this is rarely done. Because of the permissive language, courts have not dismissed charges, even after one or more of these provisions have been met. Courts have appeared reluctant to accept that a defendant will not gain Capacity To Proceed and sometimes will not dismiss charges even after lengthy hospitalizations.

#### **Suggestions**

- Change the language to make these provisions mandatory, i.e., changing the sentence from "the court *may* dismiss the charges," to "the court *shall* dismiss the charges." In addition, the provisions could include specifying that dismissal should occur at the earliest opportunity. (It should be noted that patients who meet the standards for IVC would remain in the hospital and follow civil commitment processes.) The original language could still apply to felonies.
- The time provision for misdemeanors of 5 years of hospitalization is rather long. A more reasonable time frame for misdemeanors might be 120 days or 180 days. This would allow for a much more realistic hospital stay for defendants with relatively minor offenses.

#### Other Issues with an Impact on the System

CIT – Recent implementation of Crisis Intervention Teams (CIT) in police departments has proven to effectively reduce the number of individuals with mental disorders becoming mired in the criminal justice system. Well-trained police officers can diffuse situations on the street, prior to needing to make arrests or lodge charges. The result is fewer inmates in the jails, fewer jail inmates who require mental health treatment, and fewer defendants being found ITP and taking up inpatient hospital beds. The only drawback to broader implementation of CIT training is the initial expense of training.

Mental Health Courts – Similarly, "mental health courts" have been found to be a more efficient way to address defendants who present with mental disorders. Various pretrial diversion options and familiarity with the mental health issues allows for disposition of many cases that does not involve either incarceration or inpatient hospitalization. Broader implementation of Mental Health Courts could significantly reduce the pressures in the system.

## Attachment #6 Definition of Intellectual Disability and Developmental Disability Julia Adams, The ARC of NC

### Definition of Intellectual Disability and Developmental Disabilities (I/DD)

Below are Federal and State definitions for developmental disabilities. While the NCCDD is a state council, its purpose is federally mandated. As a result, the NCCDD is guided by this federal definition for the vast majority of its activities.

#### Federal Definition of DD

The term "developmental disability" means a severe, chronic disability of an individual that:

(i) is attributable to a mental or physical impairment or combination of mental and physical impairments;

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- (ii) is manifested before the individual attains age 22;
- (iii) is likely to continue indefinitely;
- (iv) results in substantial functional limitations in 3 or more of the following areas of major life activity:
- (I) Self-care.
- (II) Receptive and expressive language.
- (III) Learning.
- (IV) Mobility.
- (V) Self-direction.
- (VI) Capacity for independent living.
- (VII) Economic self-sufficiency; and
- (v) reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.
- (B) INFANTS AND YOUNG CHILDREN An individual from birth to age 9, inclusive, who has a substantial developmental delay or specific congenital or acquired condition, may be considered to have a developmental disability without meeting 3 or more of the criteria described above if the individual, without services and supports, has a high probability of meeting those criteria later in life.

#### North Carolina Definition of DD

North Carolina General Statute 122C-3(12a) defines a developmental disability as "a severe, chronic disability of a person which:

is attributable to a mental or physical impairment or combination of mental and physical impairments;

is manifested before the person attains age 22, unless the disability is caused by traumatic head injury and is manifested after age 22;

is likely to continue indefinitely; results in substantial functional limitations in three or more of the following areas of major life activity:

self-care
receptive (understanding) and expressive language
learning mobility (ability to move)
self-direction (motivation)
the capacity for independent living
economic self-sufficiency

reflects the person's need for a combination or sequence of special, interdisciplinary, generic services, individual supports, or other forms of assistance which are of a lifelong or extended duration and are individually planned and coordinated;

an individual from birth to age 9, inclusive, who has a substantial developmental delay or specific congenital or acquired condition, may be considered to have a developmental disability without meeting at least three of the above 'areas of major life activities,' if the individual, without services and supports, has a high probability of meeting those criteria later in life."

#### Federal and North Carolina Differences

The primary difference between Federal and State definitions of developmental disabilities lies in an added clause in the State's definition to account for Traumatic Brain Injury which may be acquired after 22 years of age.

## Attachment #7 The State of North Carolina/County of Durham Re: Floyd Lee Brown Julia Adams, The ARC of NC

STATE OF NORTH CAROLINA

INA IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
O7 CVS 4587

**COUNTY OF DURHAM** 

BY JAP

IN RE: FLOYD LEE BROWN

**ORDER** 

THIS MATTER, having been heard before the Honorable Orlando F. Hudson, Jr., Senior Resident Superior Court Judge for the 14<sup>th</sup> Judicial District pursuant to the Application for Writ of Habeas Corpus filed by Floyd Lee Brown on August 14, 2007; and the Court having held a hearing at the October 8, 2007 session of Civil Superior Court for the County of Durham, pursuant to the Writ of Habeas Corpus issued by this Court on August 17, 2007; and

IT APPEARING TO THE COURT, that at the time of the hearing the Applicant, Floyd Lee Brown, was represented by Maitri "Mike" Klinkosum, Attorney at Law, and Kelley DeAngelus, Attorney at Law; and

IT APPEARING TO THE COURT, that the Office of the Attorney General of North Carolina was represented by Special Deputy Attorneys General Richard Slipsky and Robert C. Montgomery; and

IT APPEARING TO THE COURT, that the Application for Writ of Habeas Corpus was filed and presented to the Court, pursuant to Chapter 17 of the North Carolina General Statutes, and that this Court has proper jurisdiction under that Chapter; and

IT APPEARING TO THE COURT, that the Application for Writ of Habeas Corpus asks the Court to inquire into the reasons for the Applicant's continued confinement at Dorothea Dix Hospital, to release the Applicant from said confinement and dismiss, with prejudice, the criminal charges that have led to Applicant's confinement; and

IT APPEARING TO THE COURT, that the exhibits attached to the Applicant's pleadings and the Attorney General's pleadings were moved into and received into evidence; and

IT APPEARING TO THE COURT, that upon a full and thorough review of the Application for Writ of Habeas Corpus, Applicant's Motion to Amend the Application for Writ of Habeas Corpus, the Attorney General's Reply, and the Amicus Curiae Motion by the District Attorney for Prosecutorial District 20A, and upon a full evidentiary hearing on the Application for Writ of Habeas Corpus and all responsive pleadings, the Court makes the following FINDINGS OF FACT to the satisfaction of the Court and the following CONCLUSIONS OF LAW pursuant to Chapter 17 of the North Carolina General Statutes:

#### PROCEDURAL HISTORY

- 1. Floyd Lee Brown was arrested on July 16, 1993 by the North Carolina State Bureau of Investigation (SBI) and the Anson County Sheriff's Department and charged with first-degree murder and robbery with a dangerous weapon for the July 9, 1993 death of Ms. Catherine Sara Lynch.
- 2. On July 21, 1993 Mr. Brown was admitted to Dorothea Dix Hospital for a competency evaluation at the request of his court-appointed attorney Charles Collini. On August 11, 1993, Dr. Robert Rollins opined that due to Mr. Brown's mental retardation was unable to understand his position with regard to the law, the nature and object of the proceedings against him, conduct his defense in a rational manner, and cooperate with his attorney. Dr. Rollins opined that due to Mr. Brown's mental retardation he was incapable of proceeding to trial and not competent to waive his rights or make a statement.
- 3. On August 17, 1993 Donald R. Huffman, Chief District Court Judge for the 20<sup>th</sup> Judicial District, ordered Mr. Brown committed to Dorothea Dix Hospital to render treatment in order to enable him to become capable to proceed to trial.
- 4. On November 9, 1995 the Office of the District Attorney for the 20<sup>th</sup> Judicial District filed a Dismissal with Leave to reinstate, dismissing the charges against Mr. Brown due to his incapacity to proceed to trial, but reserving the right to reinstate the charges if Mr. Brown was restored to competence.
- 5. From November 9, 1995 until February 10, 2003, Mr. Brown remained committed at Dorothea Dix Hospital and incapable of proceeding to trial.
- 6. On April 17, 2000 Mr. Henry Drake, attorney at law, filed a civil suit on Mr. Brown's behalf to release him from Dorothea Dix Hospital. That suit was dismissed.
- 7. In November 2000, Mr. Brown's then court-appointed attorney, Robert S. Pleasant, filed a motion to dismiss the charges against Mr. Brown pursuant to N.C. Gen. Stat. § 15A-1008 arguing that Mr. Brown would never become competent to stand trial.
- 8. On February 10, 2003 Elizabeth Donegan, Ph.D. a forensic psychologist at Dorothea Dix Hospital, issued a report opining that Mr. Brown was competent to proceed to trial. Mr. Brown's charges were subsequently reinstated and on March 12, 2003, Maitri "Mike" Klinkosum, then an Assistant Capital Defender with the NC Office of the Capital Defender, was appointed to represent Mr. Brown.
- 9. On April 7, 2003, the prosecution obtained an indictment against Mr. Brown for first-degree murder for the July 9, 1993 death of Ms. Catherine Lynch.
- 10. On April 11, 2003, the prosecution filed a Notice of Intent to Seek the Death Penalty against Mr. Brown.

- 11. On April 28, 2003 the prosecution obtained an indictment against Mr. Brown for robbery with a dangerous weapon for allegedly robbing Ms. Lynch on July 9, 1993.
- 12. On December 17, 2003 Mr. Brown's counsel filed a Motion to Declare Defendant Mentally Retarded and to Bar Prosecution as a Capital Case. A hearing on that motion was held on March 23, 2004. As a result, the Court entered an Order declaring Mr. Brown mentally retarded and thus barring the death penalty under N.C. Stat. §15A-2005.
- 13. On April 20, 2004, Mr. Brown's counsel filed a Motion to Suppress the alleged confession on the grounds that that Mr. Brown could not understand or waive his constitutional rights. A three-day hearing was held on the Motion beginning on April 19, 2005. The Court denied the Defendant's motion.
- 14. On September 20, 2006, Mr. Brown's counsel filed a Motion to Dismiss Based on Loss and Destruction of Exculpatory Evidence, based on the fact that at some point between Mr. Brown's 1993 commitment to Dorothea Dix Hospital due to his incapacity to stand trial and Dr. Elizabeth Donegan's report from Dorothea Dix Hospital that he was capable of standing trial, almost all of the evidence collected in connection with Mr. Brown's charges was either lost or destroyed. A hearing on that Motion was held during the week of September 25, 2006. As a result of that hearing, the Court denied the Motion.
- 15. The trial of this case was scheduled to commence on September 25, 2006.
- 16. Prior to the trial date, the prosecution offered to allow Mr. Brown to plead to Voluntary Manslaughter and allow the Defendant to have credit for the years he was committed to Dorothea Dix Hospital. During the week of September 25th, 2006, the prosecution informed the defense that the prosecution would allow Mr. Brown to plead to Voluntary Manslaughter pursuant to an Alford plea.
- 17. Due to Mr. Brown's mental retardation, he was unable to understand the nature of an Alford plea and was unable to differentiate between an Alford plea, a regular plea, and a trial. As a result of Mr. Brown's inability to understand the plea as offered to him, the defense requested a competency hearing. The prosecution joined in that request and during that hearing the prosecution asked that the Court find Floyd Brown incompetent to stand trial.
- 18. On September 26, 2006, the Anson County Superior Court found Mr. Brown incompetent and incapable of proceeding to trial.
- 19. Prior to the conclusion of the September 26, 2006 competency hearing, the defense made an oral Motion to Dismiss pursuant to N.C. Gen. Stat. § 15A-1008, which the prosecution opposed. The Court denied the Defendant's Motion to Dismiss.
- 20. After the hearings of the week of September 25th, 2006, Mr. Brown was returned to Dorothea Dix Hospital on the grounds that he was incompetent to proceed to trial.

- 21. On November 11, 2006, the Wake County District Court entered an Order involuntarily committing Floyd Brown to Dorothea Dix Hospital for 180 days, concluding that he was mentally ill and a danger to himself.
- 22. On April 2, 2007, the prosecution filed a Dismissal with Leave on the murder and robbery charges pending against Mr. Brown due to his incapacity to stand trial.
- 23. On April 10, 2007, Dorothea Dix filed a Request for Hearing on the expiration of Floyd's involuntary commitment order set to expire on May 21, 2007. At the time of the hearing on Mr. Brown's Application for Writ of Habeas Corpus, Floyd Brown remains confined at Dorothea Dix Hospital.

#### FINDINGS OF FACT

- 24. The Court finds that Floyd Lee Brown has been confined to Dorothea Dix Hospital for 14 years on valid court orders based upon his incapacity to stand trial due to his mental retardation for the crimes of first-degree murder and robbery with a dangerous weapon in 93 CRS 3374 and 3375, in Anson County, North Carolina.
- 25. The Court finds that Mr. Brown was placed in Trainable Mentally Retarded classrooms throughout his education. In 1971, when Mr. Brown was 6 years old the Yadkin Pee Dee Mental Health Center found that Mr. Brown had an IQ of less than 30, was unable to perform at a kindergarten level, and much of his speech was not understandable. By the age of 16, Mr. Brown's school records indicate that he continued to function at a kindergarten level academically and socially.
- 26. The Court finds that by the time Mr. Brown was 16 years old he was unable to tell time, handle money, write his own name, and read basic words like "boys" and "girls" on restroom doors, or "fire" and "danger."
- 27. The Court finds that in 1993, four months before Mr. Brown's arrest on his current charges, Mr. Brown had substantial functional limitations in self-direction, learning, language, economic and vocation self-sufficiency, independent living and mobility.
- 28. The Court finds that Mr. Brown is mentally retarded and his intellectual functioning falls in the low-mild to high-moderate range of mental retardation. Mr. Brown has an intelligence quotient (I.Q.) in the high 50s, and has scored 30, 51, 50, 54, and 57 in past testing. Further, Mr. Brown has limitations in adaptive functioning in all eleven skill areas used to determine whether a person may be diagnosed as mentally retarded.
- 29. The Court finds that mental retardation is not curable. A person does not recover from mental retardation.

- 30. The Court finds that at this time Mr. Brown's mental retardation effects his capacity to stand trial in that he does not have the ability to think in an abstract manner and consider his choices.
- 31. The Court finds that when Mr. Brown was enrolled in competency classes at Dorothea Dix Hospital, he was able to parrot back some of the information he had been given in those classes. Mr. Brown, at the time of the hearing on the Application before this Court, is no longer able to recall information he had been given in his competency classes. He could not recall that a person can plead guilty or not guilty to criminal charges.
- 32. The Court finds that at this time, Mr. Brown is unable to understand or answer almost any of questions posed to him from a Transcript of the Plea form. Mr. Brown is unable to correctly give the city or state where he is located. Mr. Brown always gives the answer of "a.m." when asked to tell the time. In relation to questions about money, Mr. Brown is unable to identify how much money six quarters equals. Additionally, Mr. Brown is unable to calculate the correct change if he gave someone \$2.00 for something that cost \$1.85.
- 33. The Court finds that at this time when asked to spell his name, Mr. Brown is unable to correctly spell his last name, omitting the "R" in Brown, and unable to spell "pot" and "hat" when asked to do so. When asked to recite the alphabet, Mr. Brown is able to recite the alphabet up to the letter "J" but is unable to recite any further letters in the alphabet.
- 34. The Court finds that at this time Mr. Brown is not competent to proceed to trial.
- 35. The Court finds that in 14 years, Mr. Brown has never been found competent to proceed to trial by any Court that has considered the matter.
- 36. The Court finds that because of Mr. Brown's mental retardation, it is not likely that he will become competent to proceed to trial in the future. The Court find that Mr. Brown will always be mentally retarded and will never become competent to stand trial.
- 37. The Court finds that Mr. Brown has been compliant, cooperative and polite at Dorothea Dix Hospital over the last several years. Mr. Brown has accomplished many of the goals set for him at Dorothea Dix Hospital, is fairly stable, and has a job at the Hospital that he enjoys.
- 38. The Court finds that when Mr. Brown is excited or frustrated, he speaks loudly and repetitively but will settle back down. Mr. Brown has developed coping skills and demonstrated control over his emotions over the last several years. Mr. Brown does well in a structured environment, and it has been years since Mr. Brown has shown any aggression.
- 39. The Court finds that although Mr. Brown had episodes of outburst and aggressive behavior in the past, several of the episodes involved Mr. Brown's frustration about being confined to Dorothea Dix Hospital.

- 40. The Court finds that as a result of Mr. Brown's behavior in the past several years, he has achieved a high level of privileges at Dorothea Dix Hospital and is categorized as a "Level 4," the maximum amount of privileges at Dorothea Dix Hospital.
- 41. The Court finds that Mr. Brown's privileges afford him a two hour unsupervised pass that allows him to go anywhere on the Dorothea Dix campus, including the grounds outside, unsupervised. When Mr. Brown is on his two-hour pass, he must sign back in at the Hospital every hour. That when Mr. Brown in on his pass, he typically walks the grounds of Dorothea Dix Hospital with his sister when she visits, will talk with staff, or will go outside to smoke a cigarette.
- 42. The Court finds that Mr. Brown's privileges also afford him a transportation pass that allows him 15 unsupervised minutes to go to and from his job at Dorothea Dix Hospital. Mr. Brown's transport pass allows him to sign out to go to work, walk to his job at the warehouse on the grounds of Dorothea Dix, meet with his supervisor, and check out when his time at work is completed and return to his unit to sign in with the nurse. Mr. Brown is allowed to do all of this unsupervised.
- 43. The Court finds that Mr. Brown currently is not dangerous to himself or others and does not pose a threat to the community.
- 44. The Court finds that Dorothea Dix Hospital has made efforts in the past to discharge Mr. Brown from the Hospital and place him in a group home.
- 45. The Court finds that in the year prior to this hearing, Dorothea Dix Hospital took the proactive step of planning for the possibility that Mr. Brown could be discharged from Dorothea Dix Hospital and began the process of attempting to find a group home placement for Mr. Brown.
- 46. The Court finds that an appropriate group home placement is currently being sought for Mr. Brown by his case manager at CNC Access, Ms. Treniss Capps, should Mr. Brown be released. That a group home placement would provide supervision twenty-four hours a day, seven days a week. That group home staff can sleep at the group home, and are aware of the residents' comings and goings at the group home. That Mr. Brown would not be able to leave the group home without an escort and would never be left alone in the group home without supervision. Mr. Brown would not be able to come and go at will. He would be also be supervised at any day programs he attended outside of the group home.
- 47. The Court finds that Ms. Capps would be contacted if there were a problem with drugs or alcohol in a group home where she had a client. There have not been any problems with drugs or alcohol in the group homes where Ms. Capps places her clients.
- 48. The Court finds that Medicaid and CAP, a State fund for mentally retarded and developmentally disabled patients, provides funding for group home placements. Mr.

Brown would only be eligible for these funds for a group home placement if the charges pending against him were dismissed with prejudice. That Mr. Brown could not receive these funds for a group home placement if the charges pending against him were dismissed with leave to reinstate.

- 49. The Court finds that under North Carolina's commitment proceedings for defendants who are incompetent to proceed to trial, defendants that are released from commitment and are still charged with a violent crime must be returned to the custody of the Sheriff of the County where the charges are pending.
- 50. The Court finds that no other Court that has heard any issues in this case has considered any Motion or N.C. Gen. Stat. § 17 Application for Writ of Habeas Corpus based on *Jackson v. Indiana*, 406 U.S. 715, 92 S.Ct. 1845 (1972) and the 14<sup>th</sup> Amendment of the United States Constitution.

Based upon the foregoing FINDINGS OF FACT, the Court makes the following CONCLUSIONS OF LAW:

- Mr. Brown has been held for the past 14 years, and is currently being held, at Dorothea Dix Hospital under valid Court orders of the Wake County District Court.
- 2. In 14 years, Mr. Brown has never been found competent to proceed to trial by any Court that has considered the matter.
- 3. At this time Mr. Brown is not competent to proceed to trial.
- 4. Mr. Brown's commitment to Dorothea Dix Hospital has been based upon his incapacity to proceed to trial, a finding which originated as a result of the charges still pending against him. Mr. Brown's incapacity is based solely on his mental retardation.
- 5. Mr. Brown's mental retardation is incurable and prevents him from becoming capable of proceeding to trial at some point in the future and thus from being able to understand the nature and object of proceedings against him, comprehend his own situation in reference to the proceedings, or assist in his defense in a rational or reasonable manner under N.C. Gen. Stat. § 15A-1001(a).
- 6. Absent the charges of first-degree murder and robbery with a dangerous weapon, Mr. Brown does not qualify for involuntary commitment. Mr. Brown is not dangerous to himself or others, nor does he pose any type of threat to the community. In reaching this conclusion, the Court has considered the definition of "dangerousness" in N.C. Gen. Stat. § 122C-3(11).
- 7. The Court also concludes that the alleged confession in this case standing alone, and the forecast of evidence if this case proceeded to a trial, is not clear, cogent, and convincing evidence that Mr. Brown has "committed a homicide in the relevant past" and thus fails to constitute prima facie evidence of dangerousness to others under N.C. Gen. Stat. § 122C-3(11)(b).

- 8. Further, the Court concludes that even if the alleged confession and the forecast of evidence was prima facie evidence of dangerousness under N.C. Gen. Stat. § 122C-3(11)(b), the testimony of the witnesses and exhibits received into evidence are sufficient to rebut a prima facie showing of dangerousness.
- 9. Mr. Brown is charged with first-degree murder and robbery with a dangerous weapon, which are violent crimes. Thus, under N.C. Gen. Stat § 15A-1004, Mr. Brown can only be released from his commitment at Dorothea Dix Hospital to the custody of the Anson County Sheriff if the charges against him are not dismissed.
- 10. Notwithstanding N.C. Gen. Stat. § 17-4(2), this Court has jurisdiction in this matter under N.C. Gen. Stat. § 17-33(2), which states in part as follows:

But if it appears on the return of the writ that the party is in custody by virtue of civil process from any court legally constituted, or issued by any officer in the course of judicial proceedings before him, authorized by law, such party can be discharged only in one of the following cases:

\* \* 1

- (2) Where though the original imprisonment was lawful, yet by some act, omission or event, which has taken place afterwards, the party has become entitled to be discharged.
- 11. Mr. Brown's continued commitment to Dorothea Dix Hospital for 14 years, despite his inability to ever become competent to proceed to trial in the future due to his mental retardation, violates his Due Process rights under *Jackson v. Indiana*, 406 U.S. 715, 92 S.Ct. 1845 (1972) and the 14<sup>th</sup> Amendment of the United States Constitution. As the Court held,
  - 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 amount of time necessary to determine whether there is a substantial probability that he will attain capacity in the foreseeable future.
  - Id. at 738. In this case, Mr. Brown's 14 year detention at Dorothea Dix Hospital based solely on his incapacity to stand trial stemming from his incurable mental retardation is "more than the reasonable amount of time necessary to determine whether there is a substantial probability that he will attain capacity in the foreseeable future" and thus a violation of his Due Process rights. Id.
- 12. This violation of Mr. Brown's rights under *Jackson* are an "act, omission or event, which has taken place afterwards" that entitles Mr. Brown to be discharged under N.C. Gen. Stat. § 17-33(2).

- 13. By analogy, *In re Harris*, 241 N.C. 179, 84 S.E.2d 808 (1954) is instructive. The *Harris* Court held that habeas corpus is the appropriate remedy for proceedings under Article 2 Chapter 122 of the North Carolina General Statutes and do not fall under the prohibitions of N.C. Gen. Stat. § 17-34(2), which states that the Court must remand the party when "[b]y virtue of the final judgment or decree of any competent court of civil or criminal jurisdiction, or of any execution issued upon such judgment or decree." Instead, the Court held that the recovery from a mental disease after commitment falls under grants for relief under N.C. Gen. Stat. § 17-32.
- 14. Further, N.C. Gen. Stat § 17-32 mandates that "the court or judge whom the party is brought on a writ of habeas corpus shall do what justice appertains in delivering, bailing or remanding such party."
- 15. In Mr. Brown's case, unless the charges pending against him are dismissed with prejudice, Mr. Brown will continue to be detained similarly to the circumstances that arose in *State v. Gravette*, 327 N.C. 114, 393 S.E.2d 865 (1990). In *Gravette*, the defendant was charged with two counts of first-degree murder but was found incapable of proceeding to trial. He was alternately detained back and forth between Dorothea Dix Hospital, John Umstead Hospital, and the Orange County Jail because of repeated findings that he was incapable of proceeding to trial, was charged with a violent crime, but was not subject to involuntary commitment because he was not dangerous to himself or others.
- 16. In Mr. Brown's case, as in *State v. Gravette*, because Mr. Brown has been charged with violent crimes, his case falls within the parameters of N.C. Gen. Stat. § 15A-1004, which would require him to be returned to the custody of the Anson County Sheriff unless his charges are dismissed with prejudice.
- 17. Thus, in light of the paragraphs *supra*, in order to "do what justice appertains" as a result of the violation of Mr. Brown's constitutional rights under *Jackson*, the 14<sup>th</sup> Amendment, and N.C. Gen. Stat. § 17-33(2), Mr. Brown must be released from further custody. To effectuate Mr. Brown's release from custody, Mr. Brown's pending first-degree murder and robbery with a dangerous weapon charges must be dismissed.

Based upon the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, it is THEREFORE ORDERED, ADJUDGED, AND DECREED that:

1. The first-degree murder and robbery with a dangerous weapon charges pending against Floyd Lee Brown in cases 93 CRS 3374-3375 in Anson County, North Carolina be and are hereby dismissed with prejudice.

2. Floyd Lee Brown is to be summarily released from further, involuntary residence, confinement or detention at Dorothea Dix Hospital in Raleigh, North Carolina.

This the 16 day of November 2007.

The Honorable Orlando F. Hudson, Jr Senior Resident Superior Court Judge Presiding

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### Attachment #8 NAMI PowerPoint, January 11, 2012 Deby Dihoff, MA

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## Incapacity to Proceed Legislative Research Commission Committee

National Alliance on Mental Illness (NAMI) North Carolina January 11, 2011

## Therapeutic Jurisprudence

- The law should be used, whenever possible, to promote the mental and physical well being of the people it affects
- What does this mean?
  - □ people with serious mental illnesses, charged with nonviolent crimes are diverted to treatment, not jail
  - ☐ those convicted of serious crimes are provided treatment while incarcerated

What are the problems?

- People are too often caught up in the criminal justice system when their offences are *minor*, and symptoms of illness are misinterpreted as criminal behavior
- We are not meeting the <u>innocent until proven guilty</u> standard when people spend more time in jail awaiting trial than they would have even if they were found guilty
- Cycling occurs: evaluation-sick again-treatment-wait for court date- evaluation again-now incompetent again, etc. Wastes public resources
- Money is wasted with duplicate evaluations, court costs, jail costs for those who should be in hospital settings

Leslie's story

- Young black woman experiences a psychotic break (happens to be tiny)
- She calls the police when she perceives her mother, there to help, as an intruder
- Struggle ensues with police restraining her
- She goes to jail with charges (felonious assault)
- Stays in jail 12 days despite the availability of a bed for her at Central Regional

- In jail her behavior deteriorates since she is not taking her meds; lands her in isolation; treated roughly
- We're told transport issues slow down the process; she waits and waits for that available bed.
- Finally goes to Central for evaluation (forensic unit) and commitment for treatment
- Returns to jail (21 days total; 12 before eval; 9 after)
- Charges finally dropped and released; went to ER to document her injuries in jail.
- Started as minor skirmish; this case would be ideal to divert from criminal justice altogether

## John's story

- 16 year old male ROTC candidate is in group home due to emerging mental health problems
- Group home calls police, saying he is suicidal, asking that he be taken to the crisis center for evaluation
- Taken to jail where he stays for a day; due to his escalating behavior; becomes agitated, threatens himself and others (charged with simple assault)
- Goes to inpatient for treatment

## What would the right outcome have been?

- Crisis Intervention Team (CIT) trained officer diverts to treatment
- Both individuals go to Crisis Assessment Center
- Both get inpatient treatment that is needed
- Both could have been released at first appearance in court by judge (post booking)
- Police, court, and jail personnel time saved; individual saved the humiliation and trauma of the criminal justice experience and a record

## Problems with Scope of Screeners

- Avoid having to do a screening in the first place by diverting people with obvious mental illness to treatment (should happen through CIT). Waste of resources.
- Good plan to screen to sort out rapidly and less expensively those who can obviously proceed (avoid unnecessary second or full evaluation).
- The screening (first evaluation) should simply determine those who are clearly competent, and those who need a more in depth evaluation. Now we have 3 outcomes: capable, incapable, and needs more evaluation
- Currently debate occurs over the results, causing further delays, middle of the night trips to Central Regional and more expense

## **Quality Issues**

- Currently certified but have no oversight and no ongoing training requirements. Need better match of skill set of screener to characteristics of the person being evaluated
- Because they need to do a lot of these to remain competent, need to link them to large providers and have them come under oversight of the 3 regional psychiatric centers. Add annual training requirements. Increase the qualifications needed to licensed individuals.
- Do the assessments at the clinic site, not jail (post booking diversion) Reduce the demand on the hospitals by doing more of these locally by properly trained and supervised people.

## Problems in 15A-1008 Dismissal of Charges

- The law is permissive (*may*) about dismissing charges when dismissal should be required
- Examples: when the defendant has been deprived of liberty equal or in excess of maximum sentence; when it appears they will not gain the capacity to proceed (minor offences)
- Consider modeling our law after Louisiana's release the person who is incapable to proceed, but not a danger to himself or others to probation or to deferred prosecution.

#### What are the solutions?

- Divert more people with illnesses from criminal justice altogether- statewide Crisis Intervention Training for all law enforcement, and similar training for emergency rooms, magistrates, judges. "Divert, don't arrest" (pre-booking diversion)
- If you have already arrested someone, require (in the law) post booking diversion programs. Post booking should be added to GS 15A, Article 56 at the beginning of the statute. Add conditional release options. Avoid the entire cycle
- Expand Mental Health Courts in NC: restore funding. It's never too late to divert! (at any point in the criminal justice system)

## **Post Booking Diversion**

- Case managers meet the person at the jail following identification through a jail screening instrument that an illness exists
- A plan is developed, provider secured, and the prosecutor is contacted to dismiss the charges contingent on complying with treatment
- Jail time is reduced, money is saved, and individual freedoms protected for people who are ill, and are not criminals

## **Summary of Recommendations**

- Revamp and strengthen screening with more done locally
- Change 15A-2008 Dismissal of Charges to a **shall**, not a **may**
- Divert to treatment most misdemeanor offenders
- Add more time limits- while we have 7 days to get the screening done, few limits on time in jail, time in hospital, etc.
   People have waited 2-3 weeks in jail for an evaluation in Raleigh
- Avoid lawsuits in NC as has happened in Colorado by building screening and evaluation capacity.
- Add statewide: CIT, post booking diversion programs, Mental Health Courts. At every stage, DIVERT to TREATMENT

### Questions?

Deby Dihoff, MA

Executive Director

National Alliance on Mental Illness NC

www.naminc.org ddihoff@naminc.org 919.788.0801 x 7



# Attachment #9 Disability Right of North Carolina Corye Dunn



Corye B. Dunn
Public Policy Analyst
919-856-2195 (office)
919-619-1749 (mobile)
corye.dunn@disabilityrightsnc.org

Disability Rights North Carolina is the federally mandated protection and advocacy system for people with disabilities in our state. We provide policy advocacy, legal representation and other individual advocacy to North Carolinians with disabilities. Disability Rights NC recommends the committee:

- Under 15A-1008- Make dismissal of charges mandatory for those who have been confined as long as the maximum sentence available for the crime charged.
- 2. In the same section- Make dismissal of charges mandatory for those whom a judge is satisfied will not gain the capacity to proceed.
- Adequately fund the BART and STARS programs. These programs serve people with behaviors that place them at increased risk of law enforcement involvement.
- 4. Improve the quality of training for examiners and law enforcement officers who come into contact with defendants from arrest to determination of capacity, including those responsible for transportation.
- 5. Make transfers and placements for evaluation or commitment timely.
- 6. Be mindful of the diversity of people who might be incapable of proceeding. Not only people with mental illness, but also those with developmental disabilities and traumatic brain injury are caught in the criminal justice system at great expense to NC's tax payers.

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Thank you again for your attention to this important matter. I look forward to working with you as you improve North Carolina's procedures for handling defendants incapable of proceeding to trial.

# Attachment #10 NCPA Presentation to the LRC on ITP Peter Barboriak, Ph.D



## North Carolina Psychiatric Association

A District Branch of the American Psychiatric Association

## Presentation to the Legislative Research Commission Committee on Incapacity to Proceed January 11, 2012

Interest: The North Carolina Psychiatric Association (NCPA) is North Carolina's association of physicians who specialize in psychiatry. Many members of the association practice in the field of forensic psychiatry and frequently deal with issues regarding capacity to proceed and criminal responsibility in the state's courts and elsewhere. They have an interest in ensuring that the North Carolina's forensic mental health system reflects relevant professional knowledge and standards. In addition, the association has an interest in ensuring that citizens of North Carolina with mental illness facing criminal charges are evaluated using rational competency statutes and that the forensic system as a whole is fair, efficient, protective of civil rights, and of high quality.

#### Issues with current statutes and processes:

- Existing statutes and processes are not completely consistent leading to confusion and conflicting expectations between the courts, law enforcement, and the mental health system.
- Use of forensic evaluation system with the primary purpose of obtaining mental health services is an inefficient use of resources.
- Resources and dedicated programs are lacking at the community level and for special populations.

#### **Specific recommendations:**

- Establish more diversion programs and mental health courts to decrease the need for pretrial evaluations.
- Revamp local forensic screening system so that evaluators are better qualified, better trained, and actively participate in continuing forensic education.
- Provide resources and training in mental health and crisis intervention for Sheriff's Department personnel.
- Develop community and jail-based capacity restoration programming.
- Increase the number of evaluators to allow more rapid access to forensic evaluations.
- Decide whether incapable defendants with mental illness are primarily hospitalized for the purpose of restoring their capacity to proceed (a common perception) or in order to receive treatment for mental illness and dangerousness (what the current statute says).
- Stop the practice of using pretrial evaluations as a primary gateway for jail inmates to receive mental health treatment.
- Develop an effective and easily accessible mental health system to provide mental health evaluation and treatment for mentally ill jail inmates.
- Create a forensic evaluation system and services designed for defendants with intellectual and developmental deficits. Develop specialized programs for defendants with traumatic brain injuries.
- Develop statutes regarding the capacity to proceed specifically for juvenile defendants. Create a
  forensic program for juveniles. Consider creation of juvenile court clinics and a dedicated juvenile
  forensic treatment program.
- Create an office of forensic mental health services to provide statewide leadership, coordination, and oversight.
- Encourage better communication between the stakeholders and state forensic services.
- Forensic psychiatrists should be strongly represented as leaders and evaluators in the state forensic system due to unique professional characteristics such as established training and credentialing, medical expertise, and the ability to manage and treat mental illness.



#### NORTH CAROLINA GENERAL ASSEMBLY

Raleigh, North Carolina 27601

#### 01-26-2012

#### **MEMORANDUM**

TIME

**ROOM** 

TO: Members, Incapacity to Proceed LRC

FROM: Representative Shirley B. Randleman, Chair

SUBJECT: Meeting Notice

DATE

Wednesday February 8, 2012 2:00 415 LOB

Parking for non-legislative members of the committee/commission is available in the visitor parking deck #75 located on Salisbury Street across from the Legislative Office Building. Parking is also available in the parking lot across Jones Street from the State Library/Archives. You can view a map of downtown by visiting <a href="http://www.ncleg.net/graphics/downtownmap.pdf">http://www.ncleg.net/graphics/downtownmap.pdf</a>.

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If you are unable to attend or have any questions concerning this meeting, please contact James White (Rep. Randleman) at 919-733-5935.

cc:	Committee Record	_X_
	<b>Interested Parties</b>	_X_

DAY

## **ATTENDANCE**

## **Incapacity to Proceed Study Committee 2011-12**

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## Members' In-State Reimbursement Form

Form:	PR00
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**Budget to Charge** 

Administrative Division Financial Services Section

This form is used to request for in-state reimbursement for subsistence and travel for Committee, Commission or Other In-State Meetings/Legislative Business by members.

Rev:	09/2010	
Finan	cial Services Use:	

	LRC Subcommittee o	n Incapacity to Proceed	
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Committee Assistant 1	Name:James White	·	Ext.# 3-5935



#### Members' In-State Reimbursement Form

Administrative Division Financial Services Section

This form is used to request for in-state reimbursement for subsistence and travel for Committee, Commission or Other In-State Meetings/Legislative Business by members.

Rev: 09/2010
Financial Services Use:
Budget to Charge

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#### Members' In-State Reimbursement Form

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Administrative Division Financial Services Section

This form is used to request for in-state reimbursement for subsistence and travel for Committee, Commission or Other In-State Meetings/Legislative Business by members.

Rev: 09/2010
Financial Services Use:

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Committee Assistant	Name: Iames White			Esst # 2 5025



#### Members' In-State Reimbursement Form

Form: PR008

Budget to Charge\_

Ext.# 3-5935

Administrative Division Financial Services Section

Committee Assistant Name: James White

This form is used to request for in-state reimbursement for subsistence and travel for Committee, Commission or Other In-State Meetings/Legislative Business by members.

Rev: 09/2010
Financial Services Use:

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#### Members' In-State Reimbursement Form

Form:	<b>PR008</b>
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**Budget to Charge** 

Ext.# 3-5935

Administrative Division Financial Services Section

This form is used to request for in-state reimbursement for subsistence and travel for Committee, Commission or Other In-State Meetings/Legislative Business by members.

Rev: 09/2010
Financial Services Use:

LRC Subcommittee on Incapacity to Proceed (Complete Name of Committee or Commission or Description of Meeting/Business) Location of Meeting (City): Raleigh, NC **Date(s) of Meeting:** 02-08-2012 Member: Rep. Justin Burr Total Number of day's subsistence claimed (This line MUST be completed to be reimbursed) Arrived the day prior to meeting day. (Claim one day for each meeting day you attended. If spending the night prior to the first meeting day, you are entitled to an extra day.) Car Mileage (Fill out this line if mileage is different than what is certified on file) **Number of Round Trips** (Member's Signature) [Must be approved by Chairperson, Senate President Pro Tempore or House Speaker1 (Approval Signature) Names of other official legislative or state government meetings attended during this visit: Number of day's subsistence claimed for other meeting(s) Car Mileage claimed for other meeting Yes | | No  $\square$ 

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Committee Assistant Name: James White

#### **VISITOR REGISTRATION SHEET**

LRC Subcommitte on Incapacity to Proceed

002-08-2012

Name of Committee

Date

#### VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

	NAME	FIRM OR AGENCY AND ADDRESS
	ROSE HOBBAN	NCHEDIAN DEWS.
	Carol Donin	DSOHF
	Luckey WIM	OSONF
-	Dolly Whiteside	IDS
	Mildred Spearman	NCAOC
	Andrew Cagle	North Carolina Sheriffs' Assa.
	Sarah Preston	ACLU'NC
	Janes Osberg	NC Psychological Association
	KrisHortan	DMHS
	Annalier Dolph	DRNC

## Committee Sergeants at Arms

NAME O	OF COMMITTEE DU Capacity to Pro
DATE: _	DI COMMITTEE DU Capacity to Pro  2.8.2012 Room: 415
1. Name:	House Sgt-At Arms:  GRITON A CAMS  JOHN Brandon
2. Name:	JOHN Brandon
3. Name:	
4. Name:	
5. Name:	
	Senate Sgt-At Arms:
1. Name:	
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#### General Assembly of North Carolina

## Legislative Research Commission Committee on

Incapacity to Proceed

State Legislative Building Raleigh, Porth Carolina



#### **AGENDA**

Wednesday, February 8, 2012 – 2:00 p.m. Legislative Office Building, Room 415

I. Call to order

REP. SHIRLEY B. RANDLEMAN

REP. JUSTIN P. BURR REP. JOHN FAIRCLOTH REP. PAT B. HURLEY

REP. FRANK McGUIRT

**MEMBERS** 

- II. Introductory remarks by Chair
- III. Information from Staff
- IV. Committee discussion of possible recommendations
- V. Instructions to Staff
- VI. Adjourn

Next meeting: To be determined

FAX: (919) 715-5460

JAN PAUL

COMMITTEE COUNSEL

545 LEGISLATIVE OFFICE BUILDING 300 NORTH SALISBURY STREET RALEIGH, NORTH CAROLINA 27603

SUSAN SITZE

(919) 733-2578

COMMITTEE COUNSEL

HAL PELL COMMITTEE COUNSEL

SUSAN BARHAM COMMITTEE STAFF

JAMES WHITE COMMITTEE CLERK 300 NORTH SALISBURY STREET ROOM 531 RALEIGH, NC 27601 (919) 715-3021

## Legislative Research Commission Subcommittee on Incapacity to Proceed Meeting Minutes – 02-08-2012

A meeting of the Legislative Research Commission Subcommittee on Incapacity to Proceed was called to order by Representative Shirley Randleman, Chairman, at 2:03 pm on February 8, 2012, in room 415 of the Legislative Office Building.

Members present included Chairman Representative Shirley Randleman, Representative Justin Burr, Representative John Faircloth, Representative Pat Hurley, and Representative Frank McGuirt.

Staff present included NCGA Staff Attorneys Susan Sitze, Jan Paul, and Hal Pell. Also present were Research Assistant Susan Barham and Committee Clerk James White.

Also present at the meeting, and seated around the table, were the following stakeholders and participants: Rich Slipsky – The Attorney General's Office; John Rubin – UNC School of Government; Eddie Caldwell – North Carolina Sheriffs' Association, Staples Hughes – North Carolina Appellate Defender; Julia Adams – The ARC of NC; Laura White – Division of State Hospitals, North Carolina Department of Health and Human Services; Corye Dunn – Disability Rights North Carolina; Robin Huffman; Dr. Nancy Laney and Dr. Peter Barboriak – North Carolina Psychiatric Association; Peg Dorer – North Carolina Conference of District Attorneys; and Deby Dihoff – NAMI NC.

Chairman Randleman recognized and thanked Carlton Adams and John Brandon the two Sergeants-at-Arms. The Chair thanked the members and stakeholders for their attendance and the public for interest; and thanked the staff for their preparation for the meeting.

The Chair entertained a motioned to approve the draft text of the minutes from the 11-09-2011 meeting of the Incapacity to Proceed LRC. Representative Faircloth made a motion to approve the minutes as drafted, seconded by Representative Hurley. The Representatives voted and approved the minutes by show of hands.

The Chair noted that the input from the stakeholders at the last meeting was crucial in developing the proposals the committee will discuss today; not all suggestions could be incorporated and the current proposals are for the purpose of spurring discussion at the this meeting, with the hope of having the basis for legislation at the end. The Chair also reminded the members of the rules of the LRC Subcommittee and the need to produce results by the end of this meeting.

The Chair recognized Jan Paul, Staff Attorney, to speak on the LRC Rules and Procedures. Ms. Paul referenced an email that the members received from Senator Apodaca and Representative Tim Moore summarizing the rules. Committee staff reminded the Members of the four meeting limit and that a draft of the final report of the committee be sent out at least 7 days before any meeting where committee members may consider adopting a report. Ms. Paul noted that staff was attempting to give the Members 14 days to review – this giving everyone time to meet with interested parties and draft any possible amendments. She further emphasized that anything Members are going to vote upon must be in writing in order for it to be included in the legislative report. Susan Sitze was recognized and further explained the procedural details, noting that the committee makes the recommendation and the LRC must accept those recommendations in order for the report to be eligible in the Short Session.

Chair Randleman recognized Jan Paul to present page 1 of the current legislative suggestions for those deemed incapable of proceeding (see attachment #1).

Ms. Paul noted that the handout was organized in general subject matter – some of changes in G.S. 15A may also require conforming change in G.S. 122C. Page 1, Section 1 pertains to training of local evaluators, evaluation of misdemeanants at the local level only, and minimum evaluation period for felonies. She noted that section one would be uncodified; and there currently is language in the statues that indicate that the Commission for Mental Health, DD and Substance Abuse adopt rules regarding the training for individual who can be registered forensic evaluators, but does not specifically provide any guidance as to what those rules should be. Section on would give the Commission the direction to adopt rules to require that they complete training requirements. Furthermore, language will need to be determined to titles and definitions of credentialed forensic evaluator – but experts within the mental health profession to give direction on certain portions of the language.

Chair Randleman opened the floor for questions and comments from Members and stakeholders.

The Chair noted that staff was reviewing the language pertaining to certified forensic evaluator and there remains an outstanding question as to if the language should use the word credentialed or registered. Robin Huffman, NC Psychiatric Association, asserted that credentialed may be the best word choice. Chair recognized Representative Hurley who asked where and how they would be registered. Ms. Paul responded by stating that currently the Commission is charged with those activities and under N.C. Administrative Code (NCAC) states what the licensure and registration should be. Currently, the NCAC reads that persons should be registered as a forensic evaluator; however, the proper terminology would be credentialed - that there should credentialing to be become a certified forensic evaluator. The Chair recognized Dr. Nancy Laney who noted that two levels of proficiency existed - screener and evaluator. She stated that a screener has to be certified and an evaluator has a whole different level of credentialing process — either through a Ph.D. or an M.D. and a fellowship experience and post-doctoral training. Thusly, Dr. Laney stated that comparing the two was attempting to compare apples to oranges, and DHHS is talking about a screener, who has a certification process. Dr. Laney went on to state the hiring process takes care of the forensic evaluator and that circumstance is a whole different ball game. The Chair recognized Susan Sitze who stated that intent of the section, at least in part, besides having a minimal training requirement, was to provide for evaluation to be done locally at the misdemeanor level and those persons would not be sent to state facility. Ms. Sitze asked if the screeners were capable of performing the local evaluation for misdemeanants or are they only screeners at the local level. Dr. Barboriac agreed. Ms. Sitze asked if no one was an evaluator at the local level. Dr. Laney specified that the answer was no. Ms. Sitze followed up by asking if any individual could have their services at the local level or that in order to be completed they would need to be sent to a state facility. Ms. Paul stated that the NCAC requires that anybody titled as a forensic evaluator in N.C. G.S 15A be trained to formulate a conclusion as to whether the defendant has the capacity to proceed and also to prepare a report. She went to say that persons not trained to execute those duties should not be performing them, because they are required by state rules and regulations to have the ability to give an opinion as to whether or not the defendant has the capacity to proceed. Ms. Sitze noted that staff was operating under the assumption that the statue says that one or more impartial medical experts, including forensic evaluators, to evaluate at the local level - thusly, anything being done at the local level, should be done at the level by a medical expert or an evaluator. Dr. Barboriac disagreed, that is not how it operates. Ms. Sitze went on to state that if they are being screened at the local level, and that is being accepted. The Chair recognized Dr. Barboriac who mentioned that adding the word local may be beneficial. Furthermore, he stated that, right now, it is screening system where the local evaluators and screeners

are able to perform evaluation to spot the obvious cases of person who are or are not capable to proceed. Those obvious evaluations are taken out of the equation and then the other cases are looked at with a more in-depth forensic evaluation, which is performed at Central Regional Hospital (Central). Thusly, those at the local level do write a report and they are trained to forensic evaluation but they do not possess the skills to perform a full, in-depth forensic evaluation. Ms. Paul mentioned that is what staff understood and she read a section from the NCAC - Rule 10A-NCAC-27H.0207 (see attachment #2). Ms. Paul asked if the current language regarding the credentials of the local evaluators to allow those persons to make a dispositive determination on an individual capacity to proceed or does the language need to be refined to allow for higher levels of training and credentials. Dr. Barboriac stated that there would need to be more training in order for those persons to fulfill the entire rule. The current training is set at 6 hours. Ms. Sitze noted that the court can only order to an individual to be evaluated, not screened under statutory language – the court ordering that an impartial medical expert, including a forensic evaluator, examines and returns a written report describe the present state of the defendant. Ms. Sitze followed up by noting that when a court is making this order, whoever is doing is supposed to be trained to evaluate them. Thusly, if that is a practical matter and not the case, then staff must figure out what to do. Ms. Sitze noted that the intent of the draft langue is to require that those performing the duties at the local level meet the minimum standards – resulting in misdemeanors not being sent to state facilities. Dr. Laney asked if rule used the phrase evaluation or screening. Ms. Sitze clarified that the NCAC Rule stated that, but the statute says that the court can order them to be evaluated. The Chair asked if the intent of Section 1 is to only apply to local evaluations or is Section 1 is supposed to deal with credentials for all evaluation. Ms. Sitze responded by stating all evaluations; furthermore, local evaluators would then have the credentials to do proper evaluations if misdemeanors were kept at the local level. The Chair asked if the discussions were trending towards breaking apart those who are evaluated at the state facility and those examined by local examiner. Ms. Sitze said no -the discussion is centered on minimum requirements for all examiners, and that can be answered independently. If they do have minimums, will misdemeanors be left at the local level because local experts now have the proper qualifications. Representative Faircloth was recognized and referenced 6 hours if training the screeners currently undergo and asked how much more training they would need to have in order to attain a higher level of proficiency, satisfying a local evaluation. Dr. Barboriac then recommended that those individual have more optional education to satisfy a local evaluation – the 6 hours are enough for a primer so they have a basic idea of what they are doing; however, as mental health workers, they should already be well-versed within the subject and practices. Dr. Barboriac would like to see ongoing education – something must be done to keep them knowledgeable and up-to-date. Robin Huffman was recognized and stated that it was her understanding that the eligibility for training at the local level is just being a qualified mental health professional, which is different from a licensed mental health professional. This meaning, it could be anyone with BA degree and some time spent in a mental health setting or be an employee, contracted with an area program. Ms. Huffman noted that that language would need to change if that is the intent of Section 1. The capabilities and the training levels must be strengthened in order to make it an effective system. It is her understanding is that judges in some portions of the state do not necessarily respect the work of the local screeners and that is a problem that leads to individual automatically being sent to Central – lack of trust. The lack can be overcome by bolstering the training and a system that provides for clinical oversight. The Chair noted that these training patterns and system would be according to rules adopted by the Commission. Ms. Sitze followed-up that Section 1 would require all forensic evaluators to be credentialed as a certified forensic evaluator; and in allowing DHHS to determine the criteria, could that be combined with Ms. Huffman's concerns. Ms. Sitze also noted that staff was attempting not to exactly dictate the training, instead leaving it to the experts to decide. Ms. Huffman asked if the proposed language change was from forensic screener to forensic evaluator. Ms. Sitze responded by stating that screener is not in the statute

and they are looking at the rules. Ms. Paul added that Section 1 was directing the department to include specific provision in the rules to allow them to provide a comprehensive forensic evaluator at the local level. Dr. Laney agreed that it was based on the old definitions. She added what is important is that knowledge, skills, training, understanding of mental illness, and intellectually disability – thusly, reworking what is required as a base, generic forensic training, and keeping individual up-to-date. She noted that the higher skills are going to be developed at Central; and matching the statue and the rules should be the task of the committee. Ms. Sitze responded by stating that the first section is not statutory but a direction to the department. Ms. Sitze asked if the phase credentialed as a certified forensic evaluator enough guidance. Dr. Barboriac stated that the terminology is good and other states use similar language for all evaluators and certified forensic evaluators. He stated that the issue is with the private practitioners, psychiatrist and psychologist, that are performing evaluations and whether or not they need to be credited. Ms. Sitze stated that they would – anyone performing evaluations would need to be certified under the guidelines the DHHS adopt. Ms. Paul added that these aspects would be binding unless the defendant states that they do not like the initial evaluation and asked for the court to provide private evaluation; however, it would still keep those persons from being sent to Central. This will address the qualifications for all evaluators at the local and Central level. Rep. Faircloth stated that one of primary things that the committee needs to accomplish is to make it very clear to a judge that the evaluator is available at the local level and is qualified, and that the judge has confidence in the training of the local evaluator. The Chair asked if any of the Members wish to make a motion to have this become part of the official recommendation to the Legislative Research Commission. Representative Hurley made the motion with the expectation of spelling out the various sections more clearly.

The Chair recognized Ms. Paul to read and explain Section 2 on page 1 (see attachment #1). Ms. Paul referenced 15A-1002 (b)(2) and noted that the suggested changes would remove the misdemeanor section because that will be taken care of at the local level - that will be binding and keep the misdemeanant from going to Central. The word may was used in line three. Ms. Paul noted that currently there is a minimum period of observation, and there has been an appellate court decision on the issue. The court in that case noted that there is no minimum observation period required in the statute, and that may be something that the committee may want to recommend. Chair Randleman remarked that the NC Sheriffs Association spoke of the notification of clerks and other officials at the last Incapacity Subcommittee. She noted that what was not brought out in the meeting was the fact that when the state hospital sends a report to a court it goes to the Clerk in an envelope within another sealed envelope and can only be opened by the presiding judge. Thusly, it is not a situation where the clerk gets the notification, opens it, and the clerk knows the outcome of the evaluations. She went on to say that the Clerk will hold that sealed envelope and the document will be given to the judge when that particular case is on the docket – the language reads that a copy the evaluation does go to the defense attorney and to the clerk in a sealed envelope (for the presiding judge). The Chair noted that the District Attorney notification will be handled in a subsequent section of the suggested changes.

Chair Randleman opened the floor for questions and comments from Members and stakeholders.

The Chair recognized Laura White, in the place of Dr. Hazelrigg, who noted that currently between 80-85% of the evaluation are done on outpatient basis at Central – 15% done on an inpatient basis. She went on to state that the entire system would grind to a very slow process if all felony charges were required to have a 72 hour stay – a substantial amount of time to get individuals in for having evaluations. The Chair asked about the estimated averages from the last session. Dr. Barboriac stated that the interviews may last a few hours, the evaluation process includes obtaining and retaining various documents and putting the report together – thusly, the estimate is definition sensitive. The Chair asked

about the estimate based on the actual time with the defendant. Dr. Barboriac said that the actual time with the defendant, if single outpatient visit, could be anywhere between 2-5 hours, depending on the complexity of the case. He also said the he knew that in can be much less than 2-5 hours in cases where the defendant is being completely uncooperative; however, that time is not the entire evaluation process. The Chair asked if that was the time the time that the professional spend with that defendant. Dr. Barboriac stated that it was the contact time with the defendant. Ms. Sitze wanted to clarify that section deals with felonies A-E, not all felonies. The lower level felonies that are not sex offense would not be required to go to Central; furthermore, the 72 hour minimum period of observation is intended for observation not for direct one-on-one evaluation for 72 full hours – this is because there is other staff that can report to the doctor. Chair Randleman recognized Representative Faircloth who stated that it seems to be a mistake to arbitrarily assign a number of hours where someone is submitted to an expert or evaluated - if it only takes two hours in that expert's opinion, that should be sufficient. The Chair noted that this was part of the discussion in the last meeting; thusly, on the agenda so the committee can iron out the details. Mr. Faircloth followed up by asking if it would be possible to use some language that is not specific in time, but instead leaves the time determination up to the opinion of the evaluating professional. Dr. Laney responded on what she believed the intention was - when the system went from the inpatient to the outpatient model was because there wasn't a reason for everyone to come in as inpatient. They saw the fact that this process could be done as an outpatient and the door was always left open for people they needed to come in as an inpatient. She stated that they try to screen ahead of time for individuals who are more psychiatrically impaired or medically impaired. decompensating, or malingering -- on paper or with verification from jail staff or associated doctors, so they can screen and bring those individual in first. If the individuals need additional observation because they are not getting a clear picture of the defendant, then they are brought in as an inpatient. Dr. Laney noted that the inpatient unit has always been an option and has been left to their judgment, and she doesn't know how to reflect that in the statute. She also noted that they have the option to bring an individual back more than one time; they have never been dictated how long they need to spend with a case. The Chair noted that Jan Paul had the language from the last meeting and recognized her. Ms. Paul noted that 80% of cases are done with 1-2 outpatient interviews, there was discussion whether or not the Sheriffs would not to bring them back and forth, and 20% are done inpatient -1,000 done an Central, 50% are screening evaluations and 20% of the... (inaudible)...last year had already been done...(inaudible). Ms. Sitze refreshed the committee's memory that the two considerations for denoting 72 hours were to make certain that evaluations were being done properly for the more serious felonies and the issue of the transporting and individual multiple times by the Sherriff or not know how long someone is going to be at Central and planning for the Sheriff's Department. Ms. Sitze noted that she did know if the two can be resolved this way or in another. The Chair recognized Representative Burr who referenced the figure of 1,000 and if that was total. Dr. Laney agreed. Representative Burr followed-up asking if they had any idea of what would qualify under this 72 provision, and if it would it be a large portion. He continued by asking about people being housed in the state facility for three days and if you would multiple by three and would they be taking up bed space. Dr. Barboriac responded by stating that they only had 8 inpatient beds and he can gather data on the division by felony level; he could see 40,50, or maybe 60% that would fall under that provision. Representative Burr stated that he did have a concern with just assigning 72 hours and putting everyone under that obligation – not allowing for the professionals to make the determination on the time necessary and flexibility and causing a back-log. Ms. White, DHHS, noted that it is expensive to keep individuals within their hospitals, especially can Central (where the cost can be over \$1,000 a day. The Chair asked if any of the Members wish to make a motion to have this become part of the official recommendation to the Legislative Research Commission. Representative Faircloth stated that he did not exactly know what the answer was, but as long as judge can be assured that A-E felony is in fact getting the professional evaluation so

he can make a decision, then it will not be necessary to micromanage a number of hours. Ms. Sitze said that is option to remove the provision of 72 hours. Representative Hurley noted that she had been reading the minutes and it was noted that 60 days was the maximum. Ms. Sitze noted that there has been a maximum in place, never a minimum. Representative Burr made a motion to recommend Section 2 but with a rewording and feels that the professionals at the DHHS should be in charge of hours determination. The Chair noted that the sentencing being with for and ending with hours be stricken. Ms. Sitze asked if the deletion at the beginning of Section 2 and a redraft to make clear that misdemeanant, not only at the local level, cannot be sent to the state facility...(inaudible). It is a general assumption that misdemeanants are going to be evaluated at the local level and not sent to the state facility. She said deleting the language at the beginning of Section would help facilitate that, but there are a few more amendments that may need to be made to another statute. Ms. Sitze asked if the committee would like to recommend that misdemeanants only be evaluated at the local level and not take up transportation time. Representative Burr asked if this means that now misdemeanants will all be done on the local level and if there would any other option or leeway. Ms. Sitze answered by stating that is true, but the assumption is that the local officials will now be at a higher level of training outlined in Section 1; furthermore, defense attorneys have the right to request a private evaluation if they choose, but the initially order court evaluation will be done at the local level. Ms. Sitze noted, however, that the court always has discretion to order something a little different if there is reasonable cause to do so. Representative Burr made the recommendation of Section 2 to the LRC with deletion of the first sentence from the statute and by not including the middle sentence. Ms. Sitze noted that additional language will be added to make these ideas clear. Chair Randleman noted draft language will be distributed to the Members and modifications can be made at that point.

Chair Randleman recognized Jan Paul to read and explain Section 1, 2, 3, and 4 on page 2 and 3 (see attachment #1).

Ms. Paul noted that language in these sections are conforming changes in order to have G.S. 15A and G.S.122C mirror each other. Ms. Paul stated that there was general consensus on this issue. The issue of a defendant, who is committed, being released back to the jail and decompensating – raising the issue of whether or not that person has been restored (or regained capacity to proceed), then have another evaluation on capacity to proceed. But before that individual's commitment is terminated and released form outpatient or inpatient commitment, they been reassessed/evaluated for the capacity to proceed at that point in time – with the goal of shortening that overall process. Sections 1, 2, 3, and 4 on pages 2 and 3 would require the revaluation of capacity to proceed before an impatient or outpatient commitment is terminated.

Chair Randleman opened the floor for questions and comments from Members and stakeholders.

The Chair recognized Representative Faircloth who mentioned that those provisions sounded appropriate to what the committee is attempting to accomplish – he made the motioned that the committee recommend Sections 1, 2, 3, and 4 on pages 2 and 3 to the LRC. Chair Randleman recognized Richard Slipsky who believes that it is not possible for someone to be held in civil commitment when they are no longer mentally ill or dangerous, in order to reassess them. He stated that when they are originally sent to the hospital, under a G.S. 15A order, the assessment is part of that order and they have within the 60 day period to perform the assessment. If the patient is staying in the hospital past the time period necessary to do the assessment, it is because he is determined to mentally ill and/or dangerous, civilly committed. Once that person is no longer civil committed, no longer meets that criteria, Mr. Slipsky believes that holding that person who cause a conflict under Jackson v. Indiana. The Chair noted

that she and the staff understand what Mr. Slipsky is saying, and there is another section that will deal with restoration being part of the treatment. She mentioned that most of the presenters from last meeting, with Committee Members agreeing, that there be some type of restoration while they are in the facility – these sections just take that a step further. The new intention, a determination made at the conclusion of an individual's treatment. The Chair reiterated that she understood the concerns of the Attorney General's Office. Mr. Caldwell asked if Mr. Slipsky's concerns could be resolved if the section was reworded to note that a physician will determine that release is appropriate and that is part of the involuntary commitment evaluation – the evaluation would also include the examination of capacity to proceed. He noted that if a patient is before a doctor, the doctor has done the involuntary civil commitment evaluation and determined and that patient is eligible for release, the patient can be also be evaluated for incapacity to proceed at the same time – this would not keep the individual in custody any longer then is otherwise normal. Mr. Caldwell did not know if this meets the Supreme Court Case or mental health guidelines, but this could be a practical way to achieve the goals and not hold the individual any longer. The Chair noted that the intent of the language is not to hold the defendant any longer then the individual needs to be on the involuntary commitment. Mr. Caldwell followed-up by stating that when a patient is evaluated for involuntary commitment and determined to eligible for release, the doors are not just immediately opened and the patent leave. There is a release process, and if that process meets the requirements of Jackson v. Indiana, then perhaps these latest proposals can be incorporated in to that same time period. The Chair agreed. Mr. Slipsky responded by stating that what Mr. Caldwell said it is untrue, especially in cases in cases with someone who is charged with a violent crime – once a persons is order to be released, they are gone. Those persons go back to the jail. Other people, who are civilly committed, there is a discharge procedure and people are not just released onto the street – that takes more time. Mr. Slipsky noted that he was grateful for Mr. Cardwell's initiative in offering alternative, but he doesn't believe that it will be in compliance with Jackson v. Indiana. That court case stated that a person cannot have their liberty restrained in a mental institution any more then persons who are not charged with a crime. He said that you cannot hold an individual even to assess their blood pressure nor capacity to proceed either if the court has concluded that the individual is not dangerous. The Chair recognized Corye Dunn, Disability Rights of North Carolina (DRNC), who added that she felt that was a practical concern as well. For someone who is committed under G.S. 122C, that persons is not necessarily in a facility that has the capacity to do the evaluation. The Chair asked Corye Dunn if she was at the last incapacity meeting. Ms. Dunn said that she was in attendance. Dr. Laney added that they do the reevaluations for the individuals and sometimes they do not get much advanced notification on a discharge and those cases need to be squeezed into the already busy workload. She added that the only way they that notified is when personnel from the other hospitals referrer them her, and then they get all the treatment information and the other information that they need and an update on their progress. Mr. Caldwell followed-up on his previous by adding that if the defendant was in custody, and is in one mental health facility for one type of evaluation, and the moment they are determined no longer subject to involuntary civil committee, they remain in custody but they go to the jail - their freedoms will not be restrained if they go someone else for another mental health evaluation. He added that the individual is not getting out. They are just going to one place to another, based on their needs and the resources available. Mr. Caldwell added that he suspect that the patient does not immediately go right back to the county jail right after a doctor walks out of the room and has concluded the patient the patient is no longer subject in involuntary civil commitment - they remain in that facility for a period of time until the deputy sheriff is summoned to transport that individual. Mr. Caldwell noted that therein lies where the practical analysis and the legal analysis are not clear to him - noting that he would fully read Jackson v. Indiana in entirety. The Chair recognized Staples Hughes, NC Advocated for Justice, who noted that he disagreed with everything. He added that the sheriffs do have a stake in the fight because of transportation issue - for example, if the patient is at

Broughton or Cherry Hospitals, and the law says they need to be evaluated and there is no one available at those facilities, they will need to be transported to Central.

Mr. Hughes stated that he disagrees with Mr. Slipsky for the same reasons that Mr. Caldwell identified. He added that the reason for the restraint on liberty, at the point the doctor declares that a patient no longer meets the criteria for involuntary commitment, is because they are in the custody of the state. Mr. Hughes stated that if it is defined at that point that they should be further restrained for an incapacity evaluation, there is not anything unconstitutional about it; however, it will be costly. Ms. Paul asked if a distinction can be made without running afoul of Jackson v. Indiana between defendants who are committed, and have pending criminal charges, and were committee pursuant to proceeding of G.S. 15A – opposed to individuals who enter the mental health system and were committed pursuant to a civil commitment, independent of any G.S. 15A referral. Mr. Slipsky answered by stating that all of the people who are being assessed for capacity have been committed under G.S. 15A; thusly, that is how they get into the system. He stated that the system does not have individuals who have been civilly committed, who have just been petitioned into the hospital through civil commitment, who end up getting forensically evaluated. Those persons get forensically evaluated because they were charged with a crime, under G.S. 15A, and they came into the facility through that criminal court order. Mr. Slipsky stated that he does not know of any individuals who are civilly committed who end up being evaluated for crime. Mr. Caldwell suggested that it might be in the interest of the committee to research the answers instead of going back-and-forth on the legal debate during the meeting and bring the research findings to the Members attention before the next meeting. The Chair thanked Mr. Caldwell for his suggestion and noted the Representative Faircloth had already motioned to make section part of the recommendation to the LRC.

Chair Randleman recognized Jan Paul to read and explain Section 1, 2, 3, 5, 6, and 7 on page 4, 5, and 6 (see attachment #1).

Ms. Paul noted that all these sections dealt with notifications. She noted that Section 1 would change *must* to *shall* and who is to be notified; however, not stating that those listed will receive the report, they will be notified that the defendant has regained capacity to proceed; Section 2 would provide the forensic evaluator with records from the beginning, instead of the defendant at the facility at the professionals waiting for records to arrive; Section 4 would break up G.S. 15A-1002 (d) to read more easily and cross reference the mental health statutes; Section 5 pertains to notices with regards to supplemental hearings; Section 6 requires any courts reports contain a statement as to whether or not the defendant was cooperative with the examiner; Section 7 provides that a report shall contain a treatment recommendation, if any, and an opinion as to whether there is a substantial likelihood that defendant might regain capacity to proceed after treatment.

Chair Randleman informed the committee that they would delve into these sections one-by-one and, opened the floor for questions and comments from Members and stakeholders.

The Chair asked staff what the means of notification were in Section 1, page 4 – written, email, verbal? Ms. Sitze responded by stating that they could specify that and asked which form would be of preference. The Chair stated the written and she asked for additional comments for the Members. Representative Hurley asked how the Clerk would notify the District Attorney, and noted that may need to be in writing, too. The Chair responded by stating that the Clerk would receive the written notification and they would then contact the DA, defense attorney, and sheriff – the same as in situation where a judge appoints an attorney and tells the clerk to notify court appointed attorney. The Chair asked the staff if it was necessary to specify that aspect. Ms. Sitze responded that the sheriffs may want to know

more quickly than via the postal service. Mr. Caldwell responded by stating that he suspects that some form comes with the suspect when the sheriff picks that individual up. He noted that, typically, defendants do not go anywhere without some documentation; adding, it may be best to have notification come via phone call if the defendant does not leave the hospital without some form. Representative McGuirt agreed with Mr. Caldwell that sheriff's deputies always want some order, instruction, or document before they transport anyone. The additional item in this section is adding the DA and defense attorney. Ms. Paul noted there needed to be a notice sent to the DA and defense attorney, so they would be aware that the defendant is coming back and begin getting ready for trial. Otherwise, what could happen, the Clerk might get the notice and the sheriff brings the individual back, but the DA and defense attorney would not know that the individual is sitting around in the jail. The Chair stated that this section changes must to shall and adding DA and defense attorney. Mr. Caldwell stated that this was an important section because criminal cases are calendared for trial by the DA. The Clerk knows of the release, and the sheriff has gone to pick up the defendant, the person for calendaring the case may not know. It is also important for the defendant's attorney to know because that person may want the case calendared as quickly as possible. The two entities with the most incentive to have the case calendared do not get notification. Mr. Cardwell noted that this section would address this concern and be a very good improvement to the statues. The Chair asked Mr. Caldwell if the sheriffs would want something in writing when the defendant is picked up, as Representative Hurley mentioned. Mr. Caldwell stated that he is not aware of any problems in the current procedure, other than the two people most likely to get the case tried are not being noticed. The Chair asked if the current process seemed to be working with the addition of noticing these two individuals. Mr. Caldwell agreed. Mr. Barboriac noted that the current process would allow for the DA to be notified twice – by getting the forensic evaluation report and by a district court judge would have to allow the release of that patient, there is hearing, the DA is supposed notified by the hospital Assistant Attorney General (AAG)and they receive the commitment paper work. The AG is supposed to know what the DA holds as an opinion as to a discharge; thusly, in the current system, Dr. Barboriac believe the DA is notified and the defense attorney would get the report, but not in the loop on the commitment end/commitment hearing. Representative Faircloth stated that in the interest of being careful, and realizing the mistakes happen, the word written needed to be in the statutes. Ms. Sitze asked if the word also needed to be included for the sheriffs. Mr. Faircloth stated that it would be for everyone involved in the process because the worst fear is that someone is sitting in the back of a jail cell – due to communication issues. The Chair clarified that the notification to the clerk, da, defense, and sheriff would all be in writing. Ms. Sitze added that is the notification coming from the clerk to them would be in writing – that does not mean that sheriff still cannot get a phone call from the hospital saying that the individual is ready and ready to picked-up with their proper paper work. She added that is does not mean that they cannot do it sooner, but it means that the notice the Clerk provides would also be in written form. Mr. Hughes proposed the idea if it would be a good idea to cross reference G.S. 15A-1006 with 15A-1007a - this is because someone is going back to the jail is not going back for a trial. In the first instance, there will have to be a hearing to determine they are capable of proceeding. He added that those two sections have a relationship and that can be cleaned up and clarified. Ms. Sitze asked Mr. Hughes if he meant that they needed to make sure that the two sections all work together. Mr. Hughes agreed, and stated that the defendant will be going back to that hearing and not immediately to trial - this would clarify what is happening at that point. Dr. Barboriac added that the evaluator will not determine whether or not someone is capable to proceed, only an opinion. The court will determine that. Ms. Sitze responded by stating that that train of thought relates to what Mr. Hughes was speaking of – Section 1 introductory language needs to be reworded to clarify that the hospital is ready to release them and that they can come back to take part in a hearing to see if they are capable to proceed. The Chair asked if staff would modify that language. Ms. Sitze said agreed. Mr. Slipsky echoed the comments to Mr. Hughes. He added

that G.S. 15A-1006, originally, only dealt with returning the defendant; 1007 dealt with supplemental hearings, and that may be why the committee may be running into this issue. Mr. Slipsky was not sure if all of the extra language on notification needed to be added in 1006 because that is in 1007. In 1006, the law currently only calls the clerk to notify the sheriff because the sheriff was doing the transporting. He concluded that it would be important for the DA and the defense attorney to be aware of the persons retuning for a supplemental hearing – that is why they need to be notified under 1007. Ms. Sitze responded by stating that they could work that out, and that they need to reword. Ms. Paul also noted that on page 5 (see attachment #1) modification to the notification provision G.S. 15A-1007. She asked if it was unnecessary to place in 1006 if the language was inserted into 1007. Mr. Slipsky agreed. Ms. Sitze stated that they understood what the issue was and that they would work on the wording. The Chair asked if Section 1, page 4 was something the Members felt should be part of the subcommittee's recommendations. Representative Hurley made a motion that, after staff makes clarifying changes, Section 1, page 4 be part of the recommendation to the LRC.

The Chair noted that Section 2, page 4 is the new draft regarding the availability of records to the evaluators. Dr. Laney added that the word medical should be inserted in line 5 to read: any prior medical or mental health records. Ms. Sitze added that staff would need to work on clarifying that defendant's criminal record would need to be a state criminal record because of federal law (found on line for of Section 2). She noted that, for example, FBI background checks cannot be released to a nongovernmental employee. Ms. Sitze stated that she would have to work on the best wording for that. The Chair asked if Section 2, page 4 was something the Members felt should be part of the subcommittee's recommendations. Representative Hurley made a motion that, after staff makes clarifying changes, Section 2, page 4 be part of the recommendation to the LRC. Mr. Hughes wanted to add that he was not sure on some issue pertaining to the release of medical and mental health records due to a Constitutional Fourth Amendment interest - there might be a red flag there. Ms. Paul responded by stating that much of the language in the section appears in the Juvenile Code in similar form – incorporating language stating that a judge had to have a hearing. Due process is there; protections are in place; it had to be done by court order; the defendant has notice and opportunity to contest it; thusly, there are a lot of safeguards in place. Whether they are adequate or not, that is something that can be looked into. Ms. Paul also noted that staff would research if Section 2 would run afoul of any other areas. She reiterated that this would be by court order and not just ordering the release of the information. Dr. Laney stated that she is granted access to confidential files when a court order specifies; however, her problem is school systems destroy school records after a period of time. Dr. Barboriac added that the language is very similar the languages that is in the preprinted order for referring someone to evaluation for their capacity to proceed – that includes school records. John Rubin, UNC School of Government, informed the committee that the form Dr. Barboriac was referring to is AOC CR208. That document contains the language, and also contains a qualifier. Chair Randleman said she would have the staff look at that and see if any inclusions need to be made. The Chair asked if Section 2, page 4 was something the Members felt should be part of the subcommittee's recommendations. Representative Hurley made a motion that, after staff makes clarifying changes, Section 2, page 4 be part of the recommendation to the LRC.

Chair Randleman noted that reports, timeframes for evaluations to be done are covered, and completion of examinations are covered in Section 3 on pages 3 and 4 (see attachment #1). Ms. Paul added that this section is designed to address concerns on delay of the procedures and the overall process; furthermore, one of the problems was that private forensic evaluations may not be set up for weeks or months, or the defendants have trouble trying to find somebody who is qualified to the do the private evaluation, and there may need to be a time limit to require the evaluator get the report in. Dr.

Barboriac noted that he looked at the statistics and they are taking about 30 days to complete a report and mail it out after the patient is admitted. He added that there is significant variation that has to do with the complication in waiting for records – the timeframes seem reasonable in most circumstances and in certain circumstances will not be feasible. The Chair asked if the local screeners and evaluators know how long it takes them to examine and get a report back. Dr. Laney responded by stating that, anecdotally, it is much sooner. The Chair asked about the numbers outlined in the section, 10 and 20. Dr. Laney replied, probably. Ms. Sitze asked if it would help if the court was given some discretion to extend certain timelines. Dr. Barboriac stated that he looked at the screener's court order and he believed that that they had to get a report within 10 days under the current system - but, he noted, it could be 7. In reply to Ms. Sitze, he noted that a system that involves getting extension from the court could work efficiently, as he has seen it work efficiently at the federal level. Ms. Sitze responded by saying that putting in a maximum deadline is an option, too. Representative Burr noted that he had not heard a definite answer from DHHS on whether or not the timeframe was sufficient, given the fact that court has the ability to extend. He asked if these timeframes are within reason. Dr. Laney's response was that this question is difficult because they have so many, they can vary in degrees of complexity, they have staff turnover, and resources are limited. With resources up, those numbers are doable, but they struggle with shifts in resources. Representative Burr followed-up by asking if having the deadline would compromise the quality of the reports. Dr. Laney said that, despite whatever circumstance, they will not compromise on the quality. The Chair asked what a reasonable time frame would be. Dr. Laney stated that 30 days is reasonable, but they will have trouble meeting sometimes. Ms. Sitze asked if it would help if the staff was to insert language that adds the discretion of the court to extend that in all cases. Dr. Laney said yes, it would. Dr. Barboriac also agreed. The Chair recognized Debra Dihoff, NAMI, who mentioned that she understood all that comments that were being put forth; however, she noted that staff had mentioned that the intent was to eliminate delays – that needs to be the driving force. She recommended that the section be written as to not extend the timeframe in all cases. Ms. Dihoff had a question on the last line of the section - would 90 days be more than the current time frame allowed. Ms. Sitze stated that there is currently no cap on when the reports have to be done. Patients can be held in the state facility for up to 60 days for the last section is stipulated for an independent examination. Ms. Dihoff reiterated that she would like to keep it at a reasonable level. She added that a lot of people are spending more time in those facilities than if they were to have just served out their sentence. Ms. Sitze was recognized to provide one more option to the committee. She said that the committee could recommend to keep the misdemeanants at the 10 or 20 day, depending on if they are in custody, and do not allow extensions of those – would that be helpful to allow the court discretion to extend the cases that are going to state facilities. Dr. Laney provided a brief narrative on a current situation and responded that no it would not - there is no screener who will be able to make the determinations necessary to evaluate certain patients. Ms. Dihoff noted that if the misdemeanant change goes through that it will lessen the paper work for the people going to Central Regional and that would be further reasons to keep a tight limit. Chair Randleman recognized Peg Dorer, North Carolina Conference of Distract Attorneys, who noted that if the intent the is to reduce the number of people going back to the jail where they decompensate and deteriorate. If the timeframe is kept tight, but allows for some avenue for an exception to that timeframe, that may solve the problem. The Chair asked Ms. Dorer how she sees a process of expanded the timeframe being handled – would it be through the DA, Ms. Dorer said that it could be. The Chair asked if instead the court would be contacted directly and the court would do so on its own motion? Ms. Sitze noted that they are subject to the court order, so they could contact the court and request. The Chair noted that she was attempting to figure out the mechanics of getting an extension. Ms. Paul noted that the statues currently provide that the facilities are subject to certain requirements and orders, so they could on their own or through defense or DA. Mr. Slipsky reiterated his favor of a recommendation building in the possibility of allowing the court to extend the

time of the evaluation. He also noted that there is nothing stipulated in the current language about going past the 20 day timeframe – what is the penalty? Ms. Sitze asked if the extension was to be for felonies or misdemeanors or both. The Chair asked if Section 3, page 4 and 5, was something the Members felt should be part of the subcommittee's recommendations. Representative Faircloth made a motion that, with an added provision to incorporate the option of the court extending the timeframe, this section become part of the recommendation to the LRC. Representative Faircloth replied that both should be included. Representative Faircloth. Mr. Hughes was recognized to speak again on Section 3(b2)(1) — he noted that the last sentence is subject to constitutional attack, separation of powers, and infringing on the power of the judiciary. Ms. Sitze noted that the intent of that sentence was not to preclude the defense attorney from getting a private evaluation but, rather too, prohibit the misdemeanant from being sent to a state facility. The Chair asked if it is the committee would like to strike the language. Hearing no objection, the last sentence of Section 3(b2)(1) was removed from the recommendation.

The Chair noted that the language in Section 4, page 5, has remained consistent with current language. The only difference, they added a reference to G.S. 122C-54(b). Ms. Sitze noted that Section 4 and 7 will be done together. Andrew Cagle, North Carolina Sheriffs Association, said that they have sentence that they would like to add into that section - it is notification for the sheriff. The Chair noted that the first sentence outlines how the notification is sent to the clerk. The notice is not opened by the clerk and does not know what it says. It would then be sent to the DA, defense attorney, and to the defendant if he or she has now council. She also noted that these documents are confidential and she believed that the confidentially must be maintained until the report is presented to the judge at the hearing. Mr. Cagle stated that it was not a matter of getting the actual report, but instead being provided with the outcome. Ms. Sitze read the proposed language from the NCSA: At that the same time full report is first forwarded to the either the Clerk of Superior Court, defense council, or Distract Attorney, a written statement, but not full report, shall be sent to sheriff, containing only the conclusion as to whether the defendant has or lacks capacity to proceed. The Chair noted that the clerk is notified - the clerk is sent a sealed envelope with a sealed envelope inside, only to be opened by the presiding judge. She noted that it sounds like the NCSA believes the clerk is notified; however, they are not. Ms. Sitze explained that, at the time the notice is sent to the others by the evaluator, one be sent to the sheriff as well. The Chair stated that the issue is found in the last sentence of the section: Any report made to the court pursuant to this section shall not be a public record unless introduced into evidence – adding that it concerns her how broadly the concern gets into the public. Mr. Cagle said he understood. Ms. Huffman asked Mr. Cagle if the covering statement to the clerk, of the fact and the conclusion, was what they are looking for. Mr. Cagle stated that, essentially, the sheriff just wants to know what the result was for housing purposes. Chair Randleman asked if they the NCSA was looking to add language that would provide the sheriff with a copy of the covering statement that is provided to the clerk – that is still confidential document. She asked the sheriff would have a designated person in the department that would receive those documents. Mr. Cagle said he was unable to answer that. The Chair said she could not either; and she has seen far too many papers lying around on desks during her career. Ms. Sitze clarified that the possible proposal for the committee is to add language that would provide a copy of the covering statement to the sheriff, but she did not know who would provide. Dr. Barboriac stated that he believes that the clerk does have access to the cover statement - it just states the opinion. Ms. Paul asked who would provide - hospital and evaluator or the clerk. The Chair asked if the sheriff could pick up the statement when they arrive to transport them. Ms. Sitze said that the committee should clarify that the statement only goes to the sheriff when that person is in custody. The Chair asked how the hospital knows that the defendant is still in custody or not. Ms. Sitze responded that they will know when the sheriff comes to pick them up. The Chair said that this is after they are in a facility, when the final report

comes in 45 days later. Ms. Sitze said that the clerk would have to provide them with that notice; thusly, the proposal would be: if the defendant is in custody, the clerk sends a copy of the covering statement to the sheriff. Dr. Barboriac brought up the issue of giving the sheriff statements at the time of outpatient appoint, the evaluator may not have final opinion at that time, mailed later. Representative Faircloth motioned that Section become part of the recommendation to the LRC with the inclusion of language notifying the clerk and mainlining confidentiality. Ms. Sitze noted that staff will be working on placement and exact wording of the additions.

The Chair took a 15 minute recess.

The Chair recognized Mr. Rubin who spoke on Section 4 again. Mr. Rubin noted that the Chair had spoken of confidentiality of reports that are sent to the clerk. He noted that the practice has changed over the last 10 years - Central automatically sends the capacity reports to the DA's office, judge, and defense. Mr. Rubin was not sure local forensic evaluators do that, because the language is not entirely clear. The Chair also noted that she was not sure either – noting that Dr. Laney was also shaking her head in disagreement. Dr. Laney said that they do not send. Ms. Sitze asked if evaluators need to send reports for misdemeanants at the local level. Mr. Rubin responded that it was not so much related to the misdemeanor felony issue, but this is in reference to who should get the reports. He reiterated that the practice has changed because of statutory language that was not entirely clear - he did not believe that was the practice at the local level. Mr. Rubin emphasized that he was not noting that one way or the other was correct. The Chair asked if they needed to be made consistent. Mr. Rubin replied that there were some choices between efficiency and confidentiality. He also noted that had spoken with the AOC and they were considering changing the form to state that reports are being sent automatically to the DA - in line with practice, not necessarily in line with statutory language that exists. Ms. Sitze stated that what Mr. Rubin was referring to is in the middle of Section 4, page 5: 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 DA. She added, the evaluation is performed, but until the defense attorney or the court says that the person is incapable of proceeding, the DA does not need the report. Mr. Rubin noted that he believed that is right, and that this situation arose because of a change in G.S. 122C-54(b) on the second line: the facility shall send the results of the report. He stated that it used to say: the facility may the results of the report. That section then refers back to 1002(d), and the language was changed in one section but not the other. He reiterated that is was a policy choice between confidentiality and efficiency. Ms. Sitze then asked if the Members would like for the DA to receive a copy of the full report, when it if first sent back, or do the Members want to recommend that the Da received a full copy if the defense or court actually raises the issue of whether or not the defendant should be found incapable to proceed. The Chair asked if Peg Dorer could make a few comments on that issue. Ms. Dorer mentioned that she did not know precisely; however, she believes that they would want the full report. The Chair asked the committee, and Representative Faircloth stated that it would make sense to make the report available to the DA. The Chair noted that would become part of the recommendation to the LRC. Mr. Hughes was recognized to weigh in on the issue—noting that he would like to mull over the issue. He stated that the defendant's interests in confidentiality may be protected on the front end if they have a right to contest the release of information. Mr. Rubin also added that this is an issue the legislature has gone back-andforth on for some time. First, the report went to the DA automatically; then, in the early 1980's, lanague was added that disallowed the report being disclosed to the DA until further contested was added; in 2002 there was the may to shall change. Ms. Sitze noted that there was inconsistency between G.S. 15A and G.S. 122C, and the committee may want to clarify one way or another.

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The Chair opened discussion on Section 5 and supplemental hearings. She also noted that words change from may to shall, and the addition of a new section (d). The Chair asked if Peg Dorer would like to make any comment. Ms. Dorer that there was some concern the rural counties and the matter of a judge coming around again in 30 days, but most of those rural areas are multi-county districts and they can go to an adjacent county if needed. The Chair asked if the DAs saw that as a problem. Ms. Dorer said that she believes that they can make it work. Dr. Barboriac stated that the section was a very good improvement over the old statutes. In the past, he would discharge individuals to the jails, and then they would be waiting for months. Mr. Hughes asked if this section would set up a paper work problem. He stated that he thinks that the new language in G.S. 15A-1007 is a great idea; however, there may be a situation, in a complex or serious criminal case, where there will be person around for a long period of time - this creating a situation where a lot of paper work is filed between entities. Ms. Paul asked if that would be sufficiently addressed by the phrase: calendared at the earliest practical time. Mr. Hughes agreed. Ms. Paul added that staff understands that there could be a situation where a defendant, in murder case, who had been committed for 8 years. All of sudden, a miracle drug comes along or the individual gets treatment, maybe gains capacity to proceed. She said that it would not be possible to just prepare a murder trial in 60 days – it will take a lot of effort. This section will state that the legislature believes it is important enough to expedite these cases, these cases need to be set as soon as possible – the risk is the individual decompensating over time. Representative Burr motioned that the committee include Section 5 on page 6 as part of report to the LRC.

The Chair spoke on Section 6 on page 5 that would add subsection (e) to G.S. 15a-1002. Ms. Dunn was recognized and noted that she did not recall this topic being discussed in the last meeting. She asked if staff would help her figure out where that section came from. Ms. Sitze made reference to circumstances that were discussed that involved a defendant who will not speak or will not cooperate at all, and a legitimate evaluation cannot be made. She added that she remember someone stating that it should be in the report whether or not the persons cooperated. Ms. Paul added that it was suggested by the NC Conference of District Attorneys by Mr. Ray Warburton, Assistant DA-19B. Ms. Dunn said that she recognized the sentiment behind the section but did not feel that the section was adequately defined. She added that she does not know if this section gets at the willfulness or if it gets at the quality of the evaluation, and that is concern. The Chair asked if Peg Dorer had any comments. Ms. Dorer noted that the DA is not looking at the willfulness, but, instead, how much information the professionals had to go one when they were making their evaluation. Mr. Rubin added that it may already be noted if a defendant if there was a refusal to cooperate. Dr. Laney added that forensic evaluation had to be context of a clinical interview, and interview will contain this information and what their demeanor was; thusly, that information would be in the report. The Chair asked Dr. Laney if this currently was in the report or something that should be in the report. Dr. Laney stated that it should be, and a part of a competent forensic screening and evaluation. The Chair asked if they are now. Dr. Laney responded by stating that she does not perform any quality reviews; however, 95 percent of what she sees do. Dr. Barboriac noted that a report will have that aspect, source of information, and an opinion. Chair asked if the examination was satisfactorily accomplished. Dr. Barboriac noted that they either have one or they do not have an opinion. The Chair asked Dr. Barboriac and Dr. Laney if they felt this section was needed. Dr. Barboriac said the he did not believe that it was necessary. Representative Faircloth motioned that Section 6 on page 5 not become part of the report to the LRC.

The Chair began discussion on Section 7 on page 6. Mr. Hughes asked what the treatment that was referenced actually mean effort to restore the defendant's capacity to proceed or whether the language should be treatment for mental illness – they are related but are not exactly the same. Dr. Laney noted that she is very careful with her recommendations, making sure that she makes the best

recommendation and addressing specific issues and the right treatment - especially those with intellectual disabilities. Ms. Paul added that this section ties in a recurring thread that ran through the discussions from the last meeting – Section 7 on page 6, Section 2 on page 7, and everything on page 8. The statues need to be consistent. If the defendant goes in for treatment, the treatment should be geared toward restoring the defendant's capacity to proceed. Having a resolution of the charges is, generally speaking, in the individual's best interest. Ms. Paul added that the court would move onto the dismissal section if it appeared that individual was not ever going to be capable of having capacity – this is the time for the medical opinion that would assist the court, DA, and defense attorney and coming to the possible motion of dismissal. Dr. Laney stated that those person are getting treatment for their mental illness and their functional result of the mental illness at the hospital, but sometimes they do not know what the functional impairment is and to what degree they can be restored and habilitated. Mr. Hughes added that the staff could alleviate these concerns by using some phrase to modify the word treatment - something that implies effort to restore capacity. Ms. Sitze stated that this section is not intended to define treatment or effort for capacity; this section is for any treatment option and for that information to be included in the report. She added that she thinks it is separate issue from whether or not actual treatment should be directed towards restoring capacity; that will be gotten to in another section. Ms. Paul added that if it would be more realistic to add the phrase "following treatment" or "in the future". Ms. Paul said that mental health professionals may have the ability rule out cases that may not ever reach a proficient level. Dr. Barboriac noted that this section would apply to all forensic evaluation and would be on the rare side - it would be rare for an evaluator can definitively say that someone can have their capacity restored, just seeing that person one time. Dr. Barboriac said that language similar to "foreseeable future" or something could be used. The Chair noted that the staff was looking at removing the last two words of the last sentence. Dr. Barboriac said that he believed that would work. Dr. Laney said that it is rare that an evaluator, at the beginning of the process, would ever note that someone is non-restorable without ever having treatment; however, she believes a lot of other folks in the world might have that opinion without giving anyone a chance at treatment. She added that there have been opinions of non-restorable and the evaluators disagree with those - Dr. Laney and her colleagues take the time to look at the entire situation and all the variables. Ms. Sitze clarified that the opinion can go either way. She did not want the committee to have the impression that we are requiring doctors to make opinions that they believe are inappropriate. Representative McGuirt noted that his primary concern was for persons who are developmentally delayed – very low IQ. He added that he does not want to have justice delayed and have people sit in facilities and have their justice denied. Representative Burr asked if the committee will have a chance to talk about the topic again if they motion to have this become part of the recommendation to the LRC. Ms. Sitze responded yes. Representative Burr made a motion to have some version of Section 7 on page 6 to become part of the report to the LRC.

Chair Randleman recognized Jan Paul to read and explained Section 1, 2, and 3 on page 7(see attachment #1).

Ms. Paul informed the committee that this section pertained to determination of capacity and what happens if incapable. She noted that section one requires the court to make findings of fact – currently, the court is not required to make findings of fact to support the determination of incapacity to proceed. Ms. Paul added that this came up at the last meeting, the Conference of DA brought up the fact the parties are allowed to stipulate that the defendant is capable or not of proceeding and the court just accepts that stipulation; however, that should not happen, and there should be a hearing and findings of fact presented. Ms. Paul also mentioned that there had been a number of appellate court cases on the issue of the court making findings of fact. Section 2, which Ms. Paul noted that the draft language may

not be the right section of G.S 122C, but there was suggestion that the clients treatment plan shall include a goal of restoring the clients capacity to proceed, and that language would be added somewhere in G.S. 122C. Section 3 is a subsection indicating that, if the capacity to proceed is likely to be restored following treatment, and the determination is that with appropriate treatment the defendant could regain capacity, the court shall order that the treatment be at least offered. She noted that there would be issues as to whether or not patients would accept treatment, but it could be ordered as a condition of probation. The Chair opened discussion on the sections. Mr. Slipsky referenced Section 2 and stated the requirement that the treatment plan include a particular goal is conflicting with the best medical practices. He noted that treatment is supposed to include the patient in formulating goals, and he added that language detailing that the treatment team discuss and consider a goal the capacity to proceed may be best to go - it may be that a patient does not want to have his capacity to proceed. Mr. Slipsky said that he did not know if it was a good idea to place in the statute that they have to have the goal or requirement of restoring capacity. Dr. Laney echoed what Mr. Skipsky mentioned and said he was correct. Adding, they have to be given a choice, because it may not be to their benefit to be found capable to proceed. Dr. Barboriac mentioned that the idea behind the draft language for the section was good; however, specifying what the treatment plan says is going too far and is too detailed. He added that it is reasonable to expect that Central is going to make an effort to restore a patients capacity and not ignore that situation. Ms. Paul mentioned that there is another legislative direction that could be taken – there could a preamble to a different section, G.S. 15A or G.S. 122C. The preamble would indicate that the General Assembly expresses the desire that the goal be towards restoring capacity, and enable the defendant to have appropriate disposition of the criminal charges pending, if an individual is found not capable to proceed. Representative Faircloth noted that the intent is correct, but the wording of treatment may be inappropriate. He added that he believes it is a policy statement by the General Assembly. Representative Faircloth made a motion to have Section 2 on page 7 become part of the report to the LRC, adding that it needs to be placed in the correct place and with appropriate wording. Ms. Sitze noted that there may be a problem with Section 3 because ordering treatment when that person is not subject to inpatient or outpatient commitment and they have not been convicted of anything. The Chair added that the common theme of the last meeting was restoration as part of treatment. Ms. Sitze clarified that a policy statement is being looked at for Section 2 and 3, part of the goal being to restore capacity. The Chair verified that that was part of Representative Faircloth's recommendation. Representative Faircloth agreed. Dr. Barboriac added that right now restoration of capacity is implied, but having it clearly stated would be beneficial. Ms. Paul mentioned that there is discussion of that in the legislative history and that could be something that could be easily placed in a policy statement. The Chair opened discussion on Section 1 on page 7 and added that this section deals with the court requirement to make findings of fact. Representative Faircloth asked if the attorneys would speak to the problems surrounding stipulations. The Chair asked if Peg Dorer would speak on the issue. Ms. Dorer noted that stipulating helps to move things along. Chair Randleman asked if Corye Dunn had any comments. Ms. Dunn noted that there was discussion of the issue surrounding some cases that where individuals stayed in confinement for very long period of time, and the series of hearing on capacity consisted of repetitive stipulation - there wasn't adequate evidence brought forth. Ms. Dunn said that, from her perspective, the concern would be for clients who might have the capacity to proceed lingering for no good reason or clients who do not have the capacity to proceed being in an inappropriate placement. She added that it makes sense to get a quality hearing on the record, so that the client can get what they need. Representative Faircloth asked if it would be reasonable to assume that the attorneys representing the accused would consider all these facts in their decisions processes to offer stipulation. Mr. Slipsky responded that it would be; however, the devil is in the details and he related a story of Floyd Brown. In that case, neither the prosecution not the defense wanted to move forward; that happened because neither side was sure of the outcome. The result was that they thought

it was better for the defendant to stay at the hospital. Representative Faircloth asked if there were multiple stipulations in that situation. Mr. Slipsky responded that he did not remember multiple, just one. Ms. Sitze clarified that the statute that the committee is purposing to put the section in is in the initial hearing and initial determination of capacity to proceed. She added that if that person is found capable of proceeding, then they are referred to the G.S. 122C procedure – and there may be a whole other issue of whether or not an attorney, who is representing a patient, is allowed to stipulate at subsequent hearing on the continuation of a commitment. Ms. Sitze clarified that, in this section, the committee is only talking about the hearing to determine capacity, which does not occur again until someone thinks that person may be capable again. She added that there should be multiple stipulations in a criminal case if they require a hearing upfront; the multiple stipulations that Ms. Dunn was referencing were under G.S. 122C. Ms. Dunn responded that her understating was that the DA in the Floyd Brown case called for a hearing; however, she believes having a good hearing upfront would be a great place to start. Ms. Sitze added that it is possible to have more than one hearing, but it is not routine to have a regular hearing. The section would provide for an upfront hearing where all the evidence is put forth and something exists in the record. Dr. Barboriac added that that it may be better for the course of justice; however, the one practical result may be that the evaluators who do not actually get called to testify will not have to be testing much more frequently – which would take them away from doing evaluations. Mr. Skipsky asked Dr. Barboriac if it would be possible to allow stipulation if that individual had been restored but not stipulation that he is not restored - he added that will hasten. Ms. Sitze responded that is something that can be done with the committee memberships consent. Ms. Sitze noted that this section does not stipulate restoration, the section would stipulate whether or not they are capable. Mr. Slipsky stated that he believed that the evil this section was intended to resolve was postponing the criminal proceeding -- By allowing stipulations that the individual is ready to go to criminal hearing will help the situation. However, when both sides stipulate that an individual is incapable, it can end up postponing the criminal hearing. Ms. Sitze responded that they could word the section that would read that they cannot stipulate being incapable, but that they can stipulate that they are capable. Mr. Ruben asked that staff to take a look at the permissibility of stipulation by the parties without a finding by the judge and if that is sufficient to satisfy capacity to proceed. Ms. Sitze asked if there was case law that Mr. Rubin remembers that may have brought that question to mind. Mr. Rubin stated that he would be happy to look. The Chair noted that staff with work those details with Mr. Rubin and work on the correct language.

The Chair recognized Ms. Sitze to explain Section 1 and 2 on page 8. Ms. Sitze noted that this section may not be exactly what all parties would ideally like to see; however, this follows closely to a general consensus idea and address all of the issues that were brought forth in the last meeting. This section deals with dismissal of charges when a defendant is found incapable of proceeding. Ms. Sitze noted that this draft would take the current permissive dismissal by the court and make it mandatory. It applied when it appears that someone may not ever regain capacity, and if they have been deprived of their liberty for a period of time in excess of the maximum term they could have been held in prison if they were in the highest prior conviction level. This would apply for the most serious crime they were charged with—case where they have been involuntarily committed or continued to be held in jail. The court has to dismiss the case upon the expiration of 5 years for a misdemeanor or a period of 10 years for a felony. She added, if they dismiss the case because of that individual has been in jail or involuntary inpatient commitment for as long as they could have possibly sentenced to prison, at the worst possible sentence level, the dismissal is without leave. In that case, the criminal charge cannot be brought back. If they dismiss the case because the court believes that they will not ever gain capacity, and they do regain capacity, the dismissal is with leave. In the case, the DA can bring that charge back if they do regain capacity. Furthermore, the section would clarify that dismissal can be upon motion of the DA,

defense council, or the courts motion. Ms. Sitze noted that she knew of at least one stakeholder who wanted to get rid of the section based on 5 years for a misdemeanor. She noted that the reason that was left in was because if it possible that someone who is found in capable to proceed may not actually be confined. Mr. Hughes noted that the problem he saw with this approach that retains a dismissal with leave is that the situation is fairly difficult during the actually process. He added that there were people who are at the hospital and they are going to be let go because they do not meet the requirement of involuntary committee and they are incapable of proceeding. If persons are released in the home county, and there is a dismissal with leave, there are going to financial disincentives working against an adequate placement. Mr. Hughes said that there as an alternative – is to have the section read that they are dismissed, not with leave or without leave, just dismissed. If it is dismissed, then there is no financial disincentive. And if the prosecution thinks that person may have regained capacity, there is the possibility to re-indict or re-charge that individual. Mr. Hughes noted that he had sent staff a suggestion that there be a hearing if the state believes that the charges should be reinstated – a hearing to see if the person is now capable. He added that the section did address the issue of charges hanging over a person, but it does leave a cloud of dismissal with leave hanging over their heads. This can lead to a situation where the organization that could help that person after the dismissal will not help, because that person because ineligible for SSI or Social Security. Ms. Dorer added that she needed to speak with her conference, but she believes the DAs would not be in agreement with what Mr. Hughes is proposing. Mr. Rubin mused that these issues are present because of a problem with the langue of the section. The dismissal with leave phrase has created problems with placing people – the phrase means that case is still pending, despite the fact that the case in not on the docket. He added that language could be changed change to read: the court may/shall enter a dismissal under a1 or a2, such dismissal shall be without prejudice to the refilling of the case by the prosecution, should prosecution that a person is capable of proceeding to trial. Mr. Hughes noted that at the last meeting he understood the concern to be that there might not be some bar to re-prosecution. He said he submitted language that included a section that explicitly stated that the state may seek to have the charges reinstated upon a showing that the defendant has regain capacity. Ms. Sitze responded that you have to have the re-filing of the charges before you can have the hearing – to have showing, you have to have the case. There must be charges first. Ms. Sitze added that they can work on rewording the section, but it is important to clarify that the dismissal does allow the prosecutor to bring back the charges. Mr. Slipsky noted that he agreed with Mr. Rubin on changing the language - dismissal with leave has been used by the social security administration to deny benefits. He added that one of criteria, under G.S. 122C, of commitment is being able to provide safety in the community with available supports - if shelter is taken away, they cannot survive safely in the community, and are now dangerous. Chair Randleman asked Mr. Hughes to provide staff with the language. Ms. Sitze responded that they had identified the language he had distributed and they can work on it. Mr. Rubin noted two issues – get rid of dismissal with leave and give it a new title, and the question of showing that will be required for re-instituting the proceedings. For the latter. in some cases those cases may never come back and some may – should some burden be met in re-filing of the older charges. Ms. Sitze clarified that the charges would have to be re-filed, but before the individual can proceed, there will be a new hearing on capacity to proceed. The DA will have to bring back the charges and have a hearing on capacity, unless there is some way to have the hearing without a case – and Ms. Sitze did not think that there was. The Chair asked Peg Dorer to gather some recommendation from the Conference of DAs. The Chair called on Representative Burr. Representative Burr noted that there had been some good suggestions and it would be a good idea of staff to work on the language and bring the rewording back to the committee. Representative Burr motioned that Section 1 and 2 on page 8 should be part of the recommendation report to the LRC. Ms. Paul added that copies of the comments from Assistant District Attorney Ray, Warburton were available, and there might have been a change in suggestions from the last meeting and what was recently emailed to staff. Ms.

Paul stated that they would use the suggestions from Mr. Hughes and then bring drafts to the committee. The Chair agreed.

The Chair noted that not all aspects of discussion could be added to the draft proposal; however, the staff has prepared another sheet of possible recommendations (see attachment #2)that could be sent for study by the Oversight Committees. The Chair recognized Ms. Sitze to explain the other possibilities. Ms. Stize noted that these possibly recommendation were a little broader than the scope of the committee's charge. The Chair added that the staff had added item d population to the possible recommendation #5. The Chair recognized Representative Burr, Chair of the Health and Human Services Oversight Committee (HHSO), stated the items 1 and 2 may be more appropriate of the Justice and Public Safety Oversight Committee (JPSO). He added that item three was already being worked on his committee – HHSO had already asked DHHS to look at a forensic facility and begin research into that. He noted that item 4 was something that may not be prioritized within the committee due to HHSO high volume of work, and item 5 is something that his committee could look at. The Chair noted that these possible additional recommendations were ideas from the stakeholders, but were not included in the draft proposal that was before the committee today. Chair Randleman agreed that JPSO would accept item 1 and 2, and since item 3 was already in the HHSO, he could take item 4 and 5. Representative Burr agreed.

The Chair asked if there were any additional comments from the committee. Ms. Sitze was recognized to reiterate that changes to the draft report that must be in writing.

The Chair instructed the staff to proceed with draft legislation. If any Member wants to propose a change, that individual must meet with staff, two weeks before the next meeting. Any suggested change will need to be in a form that can be voted on in the next meeting. The Chair instructed advocates to direct their proposed changes to a Member; they are the only ones who can propose changes at this point. Representative Faircloth asked if the committee had representation from victim's advocates. The Chair noted that either have or have noticed everyone possible. Ms. Paul responded that the advocates who are currently around the table are defendant's advocates and not victim's advocates. Ms. Sitze said that Victim's Assistant Network (VAN) was not contacted directly. Representative Faircloth stated that it was important to include them and let VAN know what is going on within the committee and see if they have any comments.

The Chair noted that the committee will not meet in March but will meet again in early April.

There being no further business, the meeting of the Legislative Research Commission Subcommittee on Incapacity to Proceed was adjourned at 6:45 PM.

Respectfully submitted,

Representative Shirley Randleman, Chair

James White, Committee Clerk

# Attachment #1 Draft Statutory Language

# TRAINING FOR LOCAL EVALUATORS / EVALUATION OF MISDEMEANANTS AT THE LOCAL LEVEL ONLY / MINIMUM EVALUATION PERIOD FOR FELONIES

**SECTION 1.** The Commission for Mental Health, Developmental Disabilities and Substance Abuse Services shall develop and adopt rules by December 1, 2012, to require forensic evaluators appointed pursuant to 15A-1002(b) to meet the following requirements:

- (1) Complete all training requirements necessary to be credentialed as a certified forensic evaluator.
- (2) Attend annual continuing education seminars that provide continuing education and training in conducting forensic evaluations and screening examinations of defendants to determine capacity to proceed and preparation of written reports required by law.

#### **SECTION 2.** 15A-1002(b)(2) reads as rewritten:

In the case of a defendant charged with a misdemeanor only after the "(2) 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 proceed. For defendants charged with a class A through E felony, or any felony offense the conviction of which would require registration as a sex offender pursuant to Article 27A of Chapter 14 of the General Statutes, the minimum period of observation in a State facility shall be 72 hours. 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 capacity. The sheriff shall return the defendant to the county when notified that the evaluation has been completed; the 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 court. The report is admissible at the hearing."

## RE-EVALUATION FOR CAPACITY PRIOR TO RELEASE FROM COMMITMENT

## **SECTION 1.** G.S. 15A-1004(c) reads as rewritten:

"(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. The court shall also order that prior to release from custody, the defendant shall be examined to determine whether the defendant has the capacity to proceed. A report of said examination shall be provided pursuant to 15A-1002. 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."

#### **SECTION 2.** G.S. 122C-263(d)(3) reads as rewritten:

"(3) If the physician or eligible psychologist finds that neither condition described in subdivisions (1) or (2) of this subsection exists, the proceedings shall be terminated. If the respondent was committed pursuant to an order under G.S. 15A-1002, he shall be examined prior to release as required by G.S. 15A-1004(c). The person designated in the order to provide transportation shall return the respondent to the respondent's regular residence or, with the respondent's consent, to the home of a consenting individual located in the originating county and the respondent shall be released from custody. However, if the defendant was committed pursuant to an order under G.S. 15A-1002, his release shall be in accordance with the provision of G.S. 15A-1004(c)."

#### **SECTION 3.** G.S. 122C-265(d) reads as rewritten:

"(d) If at any time pending the district court hearing the outpatient treatment physician or center determines that the respondent does not meet the criteria of G.S. 122C-263(d)(1), he shall release the respondent and notify the clerk of court and the proceedings shall be terminated except that if the respondent was committed pursuant to an order under G.S. 15A-1002, he shall be examined prior to release as required by G.S. 15A-1004(c) and his release shall be in accordance with the provision of G.S. 15A-1004(c)."

#### **SECTION 4.** G.S. 122C-266 reads as rewritten:

"(3) If the physician finds that the respondent does not meet the criteria for commitment under either G.S. 122C-263(d)(1) or G.S. 122C-263(d)(2), the

physician shall release the respondent and the proceedings shall be terminated except that if the respondent was committed pursuant to an order under G.S. 15A-1002, he shall be examined prior to release as required by G.S. 15A-1004(c) and his release shall be in accordance with the provision of G.S. 15A-1004(c)."

## **NOTIFICATIONS/REPORTS/INFORMATION PROVISIONS**

SECTION 1. G.S. 15A-1006 reads as rewritten: "\\$ 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-shall notify the clerk in the county in which the criminal proceeding is pending. The clerk must-shall notify the district attorney, the defendant's attorney and the sheriff sheriff, who shall 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."

**SECTION 2.** G.S. 15A-1002(b) is amended by adding a new subdivision to read:

"(4) A presiding district or superior court judge of this State who orders an examination pursuant to subdivision (1) or (2) of this subsection shall order the release of relevant confidential information to the examiner, including but not limited to, the warrant or indictment, arrest records, the law enforcement incident report, the defendant's criminal record, jail records, any prior mental health records of the defendant, and any school records of the defendant, after providing the defendant 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 subdivision 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 requested 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 subdivision, may be examined only by order of the court."

SECTION 3. G.S. 15A-1002 is amended by adding a new subdivision as follows:

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

- (1) The report in a case of a defendant charged with a misdemeanor shall be completed and provided to the court no later than 10 days following the completion of the examination for a defendant who was in custody at the time the examination order was entered, and no later than 20 days following the completion of the examination for a defendant who was in custody at the time the examination order was entered. The examiner's determination in a misdemeanor case shall be binding upon the court and upon the parties.
- (2) The report in the case of a defendant charged with a felony shall be completed and provided to the court no later than 20 days following the completion of the examination prescribed under 15A-1002(b)(2).
- (3) In cases where the defendant challenges the determination made by the State facility and the court orders an independent psychiatric examination, that

examination 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 completion of an independent examination for up to 90 days from the date of the entry of the order."

## **SECTION 4.** G.S. 15A-1002(d) reads as rewritten:

"(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 eounsel counsel. provided, if 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. attorney, as provided in G.S. 122C-54(b). 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."

## **SECTION 5.** G.S. 15A-1007 reads as rewritten: "§ 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, trial in accordance with G.S. 15A-1004(e) and G.S.15A-1006, the clerk shall notify the district attorney of same. Upon receiving such notification, the district attorney shall calendar the matter for hearing at the next available term of court, but no later than 30 days after receiving the notification. the The court may shall 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.
- (d) If the court determines in a supplemental hearing that a defendant has gained the capacity to proceed, the case shall be calendared for trial at the earliest practicable time. Continuances that extend beyond 60 days after initial calendaring of the trial shall be granted only in extraordinary circumstances when necessary for the proper administration of justice, and the court shall issue a written order stating the grounds for granting the continuance."

**SECTION 6.** G.S. 15A-1002 is amended by adding a new subsection as follows:

"(e) Any report made to the court pursuant to this section shall include information as to whether the defendant cooperated with the examiner and must note whether the examination was satisfactorily accomplished."

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

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

## **DETERMINATION OF CAPACITY/WHAT HAPPENS IF INCAPABLE**

## **SECTION 1.** G.S. 15A-1002(b1) reads as rewritten:

"(b1) If the report pursuant to subdivision (1) or (2) of subsection (b) of this section indicates. The order of the court shall contain findings of fact to support its determination of the defendant's capacity to proceed. The parties shall not have the right to stipulate as to whether the defendant does or does not have the capacity to proceed. If the court concludes 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."

**SECTION 2.** G.S. 122C-57 is amended by adding a new subsection to read:

"(g) In the case of an client involuntarily committed following a hearing to determine capacity to proceed pursuant to G.S. 15A-1002, the client's treatment plan shall include a goal of restoring the client's capacity to proceed."

**SECTION 3.** G.S. 15A-1002 is amended by adding a new subsection to read:

"(f) Notwithstanding the provisions of 122C-263(d)(3) and 122C-266(a)(3), if a defendant (1) was charged with a criminal offense and determined under 15A-1002 to lack the capacity to proceed, and (2) was determined not to meet the criteria for inpatient commitment under 122C-266 or outpatient commitment under 122C-263(d), then the physician or eligible court shall order an examination to determine whether the defendant's capacity to proceed is likely to be restored following treatment. If the determination is that, with appropriate treatment, the defendant may regain his capacity to proceed, then the court shall order that the defendant receive treatment to pursue the goal of restoring the defendant's capacity to proceed. Reporting to the court shall be made pursuant to the provisions of 15A-1005, and supplemental hearings may be held pursuant to the provisions of G.S. 15A-1007(b)."

## DISMISSALS WHEN DEFENDANT INCAPABLE OF PROCEEDING

**SECTION 1.** G.S. 15A-1008 reads as rewritten:

"§ 15A-1008. Dismissal of charges.

- (a) When a defendant lacks capacity to proceed, the court may shall dismiss the charges: charges upon the earliest of the following occurrences:
  - (1) When it appears to the satisfaction of the court that the defendant will not gain capacity to proceed; or proceed.
  - 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 maximum term of imprisonment permissible for prior record level VI for felonies or prior conviction level III for misdemeanors for the most serious offense charged.
  - (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.
  - (b) A dismissal entered pursuant to subdivision (a)(2) of this section shall be without leave.
- (c) A dismissal entered pursuant to subdivisions (a)(1) or (a)(3) of this section shall be issued with leave. Upon the defendant becoming capable of proceeding, the prosecutor may reinstitute proceedings dismissed pursuant to subdivisions (a)(1) or (a)(3) by filing written notice with the clerk, with the defendant and with the defendant's attorney of record.
- (d) Dismissal of criminal charges pursuant to this section shall be upon motion of the prosecutor or the defendant, or upon the court's own motion."

**SECTION 2.** G.S. 15A-1009 is repealed.

# Attachment #2 Possible Additional Recommendations

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#### Possible Additional Recommendations

- The Committee recommends that the Joint Legislative Oversight Committee on Health and Human Services study the possibility of mandating that all law enforcement officers have crisis intervention training in order to recognize mental health issues and better deal with individuals with mental health issues during periods of transportation and custody.
- 2. The Committee recommends that the Administrative Office of the Courts, in consultation with the School of Government, study whether defense attorneys, prosecutors and judges should be required to receive specific training on recognizing signs of mental illness and dealing with defendants that may be incapable of proceeding, and report the results of that study to the Joint Legislative Oversight Committee on Health and Human Services.
- 3. The Committee recommends that the Joint Legislative Oversight Committee on Health and Human Services study whether it would be appropriate and feasible to open forensic units specifically focused on evaluating and providing habilitative services for individuals with intellectual or developmental disabilities and specialized in the care of incarcerated individuals diagnosed with intellectual or developmental disabilities.
- 4. The Committee recommends that the Joint Legislative Oversight Committee on Health and Human Services study the issue of transporting defendants who are being evaluated for determination of capacity to proceed, or who have been found incapable of proceeding. Possible issues to study include, whether the same-gender transportation requirement of G.S. 122C-251 should be repealed and whether it would be appropriate and feasible to develop a system where evaluators from the State facility could evaluate offenders charged with lower level felonies on-site in the county where the charges are pending as an alternative to transporting the offender to the State facility.
- 5. The Committee recommends that the Joint Legislative Oversight Committee on Health and Human Services study whether individuals with serious mental health issues and lack of capacity to proceed should be released from jail to an appropriate mental health placement on a more expedited basis, and if so, the best method and process to facilitate that recommendation.



## NORTH CAROLINA GENERAL ASSEMBLY

Raleigh, North Carolina 27601

## 04-03-2012

## **MEMORANDUM**

Members, Incapacity to Proceed LRC

TO:

Interested Parties X

FROM:	Representative Shirley I	Randleman, C	hair
SUBJECT:	Meeting Notice	, , , , , , , , , , , , , , , , , , ,	
DAY	DATE	TIME	ROOM
Tuesday	April 17, 2012	10:00AM	415 LOB
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visitor parking Building. Park Library/Archiv	deck #75 located on Salis	sbury Street a e parking lot a of downtown	•
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	le to attend or have any q Rep. Randleman) at 919.7		erning this meeting, please contact
cc: Committee	Record _X_		

## **ATTENDANCE**

## **Incapacity to Proceed Study Committee 2011-12**

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## Members' In-State Reimbursement Form

Form: PR008

Budget to Charge

Administrative Division
Financial Services Section

Committee Assistant Name: James White

This form is used to request for in-state reimbursement for subsistence and travel for Committee, Commission or Other In-State Meetings/Legislative Business by members.

Rev: 09/2010
Financial Services Use:

	LRC Subcommittee on Incapacity to Proceed
(Complete Name	of Committee or Commission or Description of Meeting/Business)
Location of Meeting	(City): Raleigh, NC
Date(s) of Meeting:	04-17-2012
Member:	Rep. Shirley Randleman
Total Number of day (This line <u>MUST</u> be comple	y's subsistence claimed
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ar Mileage claimed	for other meeting Yes No V



## Members' In-State Reimbursement Form

Form:	PF	0	0
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Budget to Charge\_

Ext.# 3-5935

Administrative Division **Financial Services Section** 

This form is used to request for in-state reimbursement for subsistence and travel for Committee, Commission or Other In-State Meetings/Legislative Business by members.

Rev: 09/2010 Financial Services Use:

	LKC Subcommittee	on Incapacity	to Proceed		
(Complete Name of	of Committee or Com	imission or De	escription of N	Meeting/Business)	
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Location of Meeting	(City): Raleigh NO	•			
	( ), <u>Autorgia 110</u>				
Date(s) of Meeting:	04-17-2012				
Member:	Rep. Pat Hurley				
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Senate President Pro Temp	ore or	ATM	UJ TXU	alling	
House Speaker]		(A	pproval Sign	ature)	
Names of other official	legislative or state go	vernment meet	ings attended	during this visit:	
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Car Mileage claimed	for <u>other</u> meeting		Yes 🗌	No 🗌	
Committee Assistant N	ame:James White	;		Ext.# 3-5935	



## Members' In-State Reimbursement Form

Form: PR008

Budget to Charge\_

Administrative Division **Financial Services Section** 

This form is used to request for in-state reimbursement for subsistence and travel for Committee, Commission or Other In-State Meetings/Legislative Business by members.

09/2010 Rev: Financial Services Use:

	LRC Subcommittee				
(Complete Name	of Committee or Com			deeting/Business)	
Location of Meeting	(City): Raleigh, NC			4	<u>-</u>
Date(s) of Meeting:	04-17-2012				_
Member:	Rep. Justin Burr				_
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Committee Assistant N	Jame: James White			Ext.# 3-5935	i



## Members' In-State Reimbursement Form

Form: PR008

Budget to Charge

Ext.# 3-5935

Administrative Division Financial Services Section

This form is used to request for in-state reimbursement for subsistence and travel for Committee, Commission or Other In-State Meetings/Legislative Business by members.

Rev: 09/2010
Financial Services Use:

LRC Subcommittee on Incapacity to Proceed (Complete Name of Committee or Commission or Description of Meeting/Business) Location of Meeting (City): Raleigh, NC **Date(s) of Meeting:** 04-17-2012 Member: Rep. Frank McGuirt Total Number of day's subsistence claimed (This line MUST be completed to be reimbursed) Arrived the day prior to meeting day No (Claim one day for each meeting day you attended. If with the spending the night prior to the first meeting day, you are entitled to an extra day.) Car Mileage (Fill out this line if mileage is different than what is certified on file) **Number of Round Trips** Member's Signature [Must be approved by Chairperson, Senate President Pro Tempore or House Speaker] Names of other official legislative or state government meetings attended during this visit: Number of day's subsistence claimed for other meeting(s) Car Mileage claimed for other meeting Yes 🗍 No

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Committee Assistant Name: James White

## **Committee Sergeants at Arms**

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DATE: 4-16-12 Room: 415	
House Sgt-At Arms:	
1. Name: Fred Fines 2. Name: Martha Gadeson	
2. Name: <u>Martha Gadeson</u>	
3. Name:	
4. Name:	
5. Name:	
Senate Sgt-At Arms:	·
1. Name:	
2. Name:	
3. Name:	
I. Name:	•
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## **VISITOR REGISTRATION SHEET**

LRC	Subcommitte	on	Incapacity	y to	Proceed
			_		

4-17-2012

Name of Committee

Date

## VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kris Hornton	DHMS
Mildred Spearman	NCDOC
LUCKEY WELSH	DHHS
Dolly Whiteria	I.O.S
Annalicse bolph	prnc
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## General Assembly of North Carolina

# Legislative Research Commission Committee on

Incapacity to Proceed

State Legislative Building Raleigh, Porth Carolina



## AGENDA

Tuesday, April 17, 2012 – 10:00 a.m. Legislative Office Building, Room 415

I. Call to order

REP. SHIRLEY B. RANDLEMAN

REP. JOHN FAIRCLOTH REP. PAT B. HURLEY REP. FRANK McGUIRT

MEMBERS REP. JUSTIN P. BURR

- II. Introductory remarks by Chair
- III. Discussion and Adoption of Committee Report
- IV. Adjourn

SUSAN SITZE
COMMITTEE COUNSEL
545 LEGISLATIVE OFFICE BUILDING
300 NORTH SALISBURY STREET
RALEIGH, NORTH CAROLINA 27603
(919) 733-2578
FAX: (919) 715-5460

JAN PAUL COMMITTEE COUNSEL

HAL PELL COMMITTEE COUNSEL

SUSAN BARHAM COMMITTEE STAFF

JAMES WHITE COMMITTEE CLERK 300 NORTH SALISBURY STREET ROOM 531 RALEIGH, NC 27601 (919) 715-3021

## Legislative Research Commission Subcommittee on Incapacity to Proceed Meeting Minutes – 04-17-2012

A meeting of the Legislative Research Commission Subcommittee on Incapacity to Proceed was called to order by Representative Shirley Randleman, Chairman, at 10:03 am on April 17, 2012, in room 415 of the Legislative Office Building.

Members present included Chairman Representative Shirley Randleman, Representative Justin Burr, Representative Pat Hurley, and Representative Frank McGuirt.

Staff present included NCGA Staff Attorneys Susan Sitze, Jan Paul, and Hal Pell. Also present were Research Assistant Susan Barham and Committee Clerk James White.

Chairman Randleman recognized and thanked Fred Hines and Martha Gadison the two Sergeants-at-Arms. The Chair thanked the members for their attendance. Rep. Randleman noted the purpose of the meeting was for follow-up discussion, and, hopefully, adoption of the committee report for the LRC Study. She noted that Members and all of the interested parties received copies of the proposed report to the LRC Committee (see attachment #1).

The Chair entertained a motioned to approve the draft text of the minutes from the last meeting of the Incapacity to Proceed LRC. Representative Burr made a motion to approve the minutes as drafted and the Chair requested that the members signify their approval by stating "aye". The minutes were approved.

The Chair noted that there were two amendments to the proposed report to the LRC, and they were a result of recommendations from the North Carolina Department of Health and Human Services. ASA-46 [v.1] was the first amendment called, and she noted that it can be found on page 24 line 1 (see attachment #2). The Chair recognized Rep. Pat Hurley to explain her amendment. Rep. Hurley noted that there was concern about having 20 days and that 30 days would replace that number. She noted that this would give them a little extra time to perform their duties. The Chair asked if there were any questions from the committee Members. With no questions, the Chair proceeded to take a vote on the amendment. She asked all in favor of the amendment raise their right hand. With a unanimous vote of approval, the amendment was adopted.

The Chair noted that there was another amendment that would add a new recommendation to the LRC Report from the committee. She then called on Rep. Hurley to explain the amendment. Rep. Hurley briefly explained the change to page 18, recommendation 5. The Chair asked if there were any questions from Members. Seeing none, she called for a vote on this amendment and asked Member in approval to raise their right hand. With a unanimous vote of approval, the amendment was adopted.

The Chair opened the floor for any other discussions on the proposed report to the LRC. She noted that typos and other technical corrections will be made by the staff.

The Chair entertained a motion to approve the report. Rep. Hurley moved to approve the report as amended, and the Chair asked those in favor of approving the report to be sent to the LRC to signify by raising their right hand. With a unanimous vote, the committee report to the LRC was approved.

The Chair thanked the members and all of the stakeholders for coming to all the meetings and working diligently, and asked for the stakeholders to continue their support as the legislation moved forward. There being no further business, the meeting of the Legislative Research Commission Subcommittee on Incapacity to Proceed was adjourned at 10:08 am.

Respectfully Submitted,

Representative Shirley Randleman, Chair

James White, Committee Clerk

# Attachment #1 NCGA Legislative Research Commission Incapacity to Proceed LRC Report to the Regular Session of the 2011 General Assembly

## NORTH CAROLINA GENERAL ASSEMBLY

## LEGISLATIVE RESEARCH COMMISSION

STATE LEGISLATIVE BUILDING RALEIGH, NC 27601



April 17, 2012

#### TO THE MEMBERS OF THE LEGISLATIVE RESEARCH COMMISSION:

Attached for your consideration is the report to the 2012 Regular Session of the 2011 General Assembly. This report was prepared by the Legislative Research Commission's Committee on Incapacity to Proceed, pursuant to G.S. 120-30.17(1).

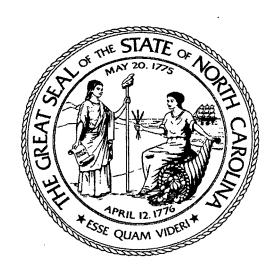
Senator	Representative Shirley Randleman
Co-Chair	Co-Chair

Co-Chairs
Committee on Incapacity to Proceed
Legislative Research Commission

## LEGISLATIVE RESEARCH COMMISSION

# INCAPACITY TO PROCEED COMMITTEE

## NORTH CAROLINA GENERAL ASSEMBLY



REPORT TO THE
2012 SESSION
of the
2011 GENERAL ASSEMBLY
OF NORTH CAROLINA

**APRIL, 2012** 

## A LIMITED NUMBER OF COPIES OF THIS REPORT ARE AVAILABLE FOR DISTRIBUTION THROUGH THE LEGISLATIVE LIBRARY

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OR

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## TRANSMITTAL LETTER

April 17, 2012

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TO THE MEMBERS OF THE 2012 REGULAR SESSION OF THE 2011 GENERAL ASSEMBLY

The Legislative Research Commission herewith submits to you for your consideration its report and recommendations to the 2012 Regular Session of the 2011 General Assembly. The report was prepared by the Legislative Research Commission's Committee on Incapacity to Proceed, pursuant to G.S. 120-30.70(1).

Respectfully submitted,

Senator Philip E. Berger President Pro Tempore of the Senate Representative Thomas R. Tillis Speaker of the House of Representatives

Co-Chairs Legislative Research Commission

# LEGISLATIVE RESEARCH COMMISSION MEMBERSHIP

## [Back to Top]

#### 2011 - 2012

**President Pro Tempore of the Senate** 

Senator Philip E. Berger

Co-Chair

Senator Thomas M. Apodaca

Acting Co-Chair

Senator Peter S. Brunstetter Senator Linda D. Garrou

Senator Martin L. Nesbitt, Jr. Senator Richard Y. Stevens

**Speaker of the House of Representatives** 

Representative Thomas R. Tillis

Co-Chair

Representative Timothy K. Moore

Acting Co-Chair

Representative John M. Blust

Representative Justin P. Burr

Representative Mike D. Hager

Representative Edith D. Warren

## **PREFACE**

## [Back to Top]

The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is the general purpose study group in the Legislative Branch of State Government. The Commission is co-chaired by the President Pro Tempore of the Senate and the Speaker of the House of Representatives and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of an investigation into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

The Legislative Research Commission authorized the study of Incapacity to Proceed, under authority of G.S. 120-30.17(1). The Committee was chaired by Senator and Representative Shirley Randleman, Co-Chairs of the Committee. The full membership of the Committee is listed under Committee Membership. A committee notebook containing the committee minutes and all information presented to the committee will be filed in the Legislative Library by the end of the 2011-2012 biennium.

## **COMMITTEE PROCEEDINGS**

## [Back to Top]

The Legislative Research Commission's Committee on Incapacity to Proceed met four times after the 2011 Regular Session. The Committee's Charge can be found <u>here</u>. The following is a brief summary of the Committee's proceedings. Detailed minutes and information from each Committee meeting are available in the Legislative Library.

The Legislative Research Commission Committee on Incapacity to Proceed was established to consider the adequacy of the involuntary commitment process for a criminal defendant who lacks the capacity to proceed to trial. The Committee was authorized to consider the impact of current law on the limited resources of local law enforcement, hospitals, mental health facilities, and the State's court system while balancing the rights of the accused, victims, and the safety and the general welfare of the public. The Committee was also authorized to consider options for determining whether a defendant is likely to attain the capacity to proceed to trial in the foreseeable future and at what point in the process that determination should be made.

The Committee met four times from November 9, 2011, to April 17, 2012. At each meeting, the Committee provided interested parties an opportunity to be heard on the issues and received public comment. Detailed minutes and information from each Commission meeting are available in the Legislative Library.

#### November 9, 2011 Meeting

The first meeting of the Legislative Research Commission Subcommittee on Incapacity to Proceed was held on November 9, 2011. Following introductions of those present and opening remarks by Chair Shirley Randleman, the Committee adopted its operating budget. The following presentations were made:

- Committee co-counsel Hal Pell described the genesis of the current procedures relating to a defendant's incapacity to proceed and the need to comply with constitutional due process and equal protection concerns addressed in the 1972 United States Supreme Court case, Jackson v. Indiana.
- Committee co-counsel Janice Paul provided the background and overview of the North Carolina laws governing incapacity to proceed and the civil commitment process. A PowerPoint presentation is included in the Committee minutes.
- Chair Randleman described the situation that arose within her community which prompted her to request a study. She reiterated that the Committee's

mission is to promote efficiency and safeguards for everyone, including the general public.

- John Rubin, UNC School of Government noted that the SOG conducts training, consultation, and research for individuals, courts, and the criminal justice system. He discussed the legal standard which applies to incapacity to proceed, which differs from that applied to civil commitment proceedings.
- Brad Greenway, District Attorney for the 29A Prosecutorial District, discussed specific concerns that arise when a defendant has committed a crime, is found incapable to proceed, might never gain the capacity to proceed, but does not meet commitment criteria.
- Andrew Cagle, North Carolina Sheriffs Association, expressed concern over manpower and actual transportation costs associated with transporting defendants between jails and mental health facilities.
- Dr. Mark Hazelrigg, Director of Outpatient Evaluations at Central Regional Hospital, said that the differences in the legal standard for capacity to proceed and the standard for involuntary commitment cause a circular system, and expressed concern that there is no statutory mandate or even suggestion that hospitals provide services designed to restore an individual's capacity to proceed.
- Richard Slipsky, Special Deputy Attorney General, observed that most of the
  cases start in Superior Court, but after a defendant is released from a
  commitment, the case comes back in through a District/jail court. He
  expressed concern about transportation costs as well as the cost of
  maintaining someone in a state hospital who does not need to be there. He
  echoed Dr. Hazelrigg's concern that the statutes do not specify restorative
  measures for capacity, even though most patients who are confined in a
  hospital would like to have their criminal charges resolved.

The Chair then opened the floor for discussion and questions.

#### January 11, 2012 Meeting

In its second meeting on January 11, 2012, the Committee had a round-table discussion of various agencies' roles and interest in the incapacity to proceed process, any perceived problems, and potential solutions to those problems. Chair Randleman stressed the importance of coming up with draft legislation that can

proceed through the General Assembly during the 2012 Short Session. Details of this discussion are contained in the Committee minutes.

John Rubin, UNC School of Government, presented case studies involving both misdemeanor and felony offenders whose capacity to proceed was questioned.

The floor was opened for questions and comment. Information was exchanged about the following:

- Who is qualified to conduct local forensic examinations;
- o The time frame time reporting by the regional hospital;
- o The procedure after individuals are released back to jail;
- Problems of decompensating in the jails;
- Issues relating to dismissal of charges;
- Notification to the court and interested parties of the defendant's mental health status;
- Subsequent hearings on restoration of capacity;
- o Problems relating to individuals who are housed as safekeepers at Central Prison and who are not receiving mental health treatment;
- Approaches to expedite the process of screening and examination;
- o Tracking and monitoring;
- o Privacy issues.

#### Recommendations included:

- The need for judges to take evidence and make findings of fact on capacity to proceed;
- o Specific changes to G.S. 15A-1008 relating to dismissal;
- o The repeal of G.S. 15A-1009 concerning dismissal with leave when a defendant is found incapable of proceeding;
- Credentialing of forensic examiners.;
- Authorizing examiners to have access to many pieces of information (mental health treatment, criminal background, jail records, indictments, and police investigative reports);
- o Mandated treatment to restore an individual's capacity to proceed;
- o Implementation of a process to allow forensic units to re-evaluate an individual's capacity before being returned to jail;
- Mandatory training of judges, attorneys, and law enforcement personnel regarding incapacity to proceed and commitment procedures;
- o Enhanced coordination, communication between various agencies, and accountability within the process;
- Establishing time limits on the proceedings;
- Greater training of examiners to identify and treat specific mental health disabilities, the establishment of specialized facilities for individuals with such disabilities, and the recognition that people with

certain disabilities will most likely never be found capable to proceed in court.

#### February 8, 2012 Meeting

The Committee held its third meeting on February 8, 2012. The meeting's focus was on discussing proposed legislation and recommendations designed to make improvements in the capacity to proceed process. The following issues and proposals were discussed:

- Training for local forensic evaluators.
- Re-evaluation of defendants for a capacity determination prior to being returned to the jail from a state facility.
- Forensic evaluators' access to records.
- Time limits for forensic evaluations.
- Reporting a defendant's level of cooperation with the forensic examination.
- Minimum period of inpatient evaluation and observation.
- Requiring that defendants receive treatment to restore capacity to proceed.
- Reports to the court, parties, and communication and tracking issues.
- Notices of supplemental hearings.
- Dismissal of criminal charges.
- Requirement that court make findings of fact as to capacity to proceed.
- Methods of expediting cases for trial.
- Pretrial release for individuals with intellectual or developmental disabilities.
- Transportation issues.
- Bond, placement and other pretrial release issues for individuals with serious mental health issues.

Details of the discussion are contained in the Committee minutes.

After receiving input from Committee members and interested persons, the Committee voted that the General Assembly enact legislation to make changes to the process and procedures regarding incapacity to proceed, as follows:

- To provide that evaluation for misdemeanants be conducted locally only, and not at state facilities.
- To authorize a judge to order the release of confidential information to the forensic examiner.
- To require a court order to include findings of fact to support its determination regarding capacity to proceed.
- To provide time limits for reports to the court.
- To provide that the sheriff receive a copy of the covering statement of the forensic examiner's final report.

- To require that a defendant be examined for a determination of capacity to proceed prior to release from an involuntary civil commitment.
- To specify procedures relating to the return of the defendant for trial upon gaining capacity to proceed.
- To require expedited calendaring of cases for trial after a defendant gains capacity to proceed.
- To require dismissal of criminal charges in specified circumstances.
- To require that reports contain treatment recommendations, if any.
- To make conforming changes to G.S. Chapter 122C.

The Committee voted to include the following possible recommendations in its draft final report:

- That the Committee on Justice and Public Safety study the possibility of mandating that all law enforcement officers have crisis intervention training in order to recognize mental health issues and identify individuals with intellectual/developmental disabilities and to better deal with individuals with mental health issues or intellectual/developmental disabilities during the period of transportation and custody.
- That the Administrative Office of the Courts, in consultation with the School of Government, study whether defense attorneys, prosecutors and judges should be required to receive specific training on recognizing signs of mental illness and dealing with defendants that may be incapable of proceeding, and report the results of that study to the Committee on Justice and Public Safety.
- That the Joint Legislative Oversight Committee on Health and Human Services study the issue of transporting defendants who are being evaluated for determination of capacity to proceed, or who have been found incapable of proceeding. Possible issues to study include, whether the same-gender transportation requirement of G.S. 122C-251 should be repealed and whether it would be appropriate and feasible to develop a system where evaluators from the State facility could evaluate offenders charged with lower level felonies on-site in the county where the charges are pending as an alternative to transporting the offender to the State facility.
- That the Joint Legislative Oversight Committee on Health and Human Services study whether individuals with serious mental health issues or intellectual/developmental disabilities and lack of capacity to proceed should be released from jail to an appropriate mental health placement on a more expedited basis, and if so, the best method and process to facilitate that recommendation.

Rep. Burr informed the Committee that the Joint Legislative Oversight Committee on Health and Human Services was already considering the issue of whether it would

be appropriate and feasible to open forensic units specifically focused on evaluating and providing habilitative services for individuals with intellectual or developmental disabilities and specialized in the care of incarcerated individuals diagnosed with intellectual or developmental disabilities.

## FINDINGS AND RECOMMENDATIONS

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#### **FINDINGS:**

The Committee finds that comprehensive procedural changes need to be made in the process relating to determinations of a criminal defendant's incapacity to proceed to trial, in view of limited resources of law enforcement, hospitals, and mental health facilities, in consideration of a defendant's legal and mental status as they relate to providing a fair trial, and in order to promote efficiency in the overall judicial process in matters relating to incapacity to proceed. As a result of these findings, the Committee makes the following Recommendations:

#### **RECOMMENDATION 1:**

The Committee recommends that the General Assembly enact legislation (attached) to make changes to the process and procedures regarding incapacity to proceed.

#### **RECOMMENDATION 2:**

The Committee recommends that the Committee on Justice and Public Safety study the possibility of mandating that all law enforcement officers have crisis intervention training in order to recognize mental health issues and to identify individuals with intellectual or developmental disabilities during period of transportation and custody and to interact with them appropriately.

#### **RECOMMENDATION 3:**

The Committee recommends that the Administrative Office of the Courts, in consultation with the School of Government, study whether defense attorneys, prosecutors and judges should be required to receive specific training on recognizing signs of mental illness and intellectual or developmental disabilities and dealing with defendants who may be incapable of proceeding, and report the results of that study to the Committee on Justice and Public Safety.

#### **RECOMMENDATION 4:**

The Committee recommends that the Joint Legislative Oversight Committee on Health and Human Services continue to study whether it would be appropriate and feasible to open forensic units specifically focused on evaluating and providing habilitative services for

individuals with intellectual or developmental disabilities and specialized in the care of incarcerated individuals diagnosed with intellectual or developmental disabilities.

#### **RECOMMENDATION 5:**

The Committee recommends that the Joint Legislative Oversight Committee on Health and Human Services study the issue of transporting defendants who are being evaluated for determination of capacity to proceed, or who have been found incapable of proceeding. Possible issues to study include whether the same-gender transportation requirement of G.S. 122C-251 should be repealed and whether it would be appropriate and feasible to develop a system where evaluators from the State facility could evaluate offenders charged with lower level felonies on-site in the county where the charges are pending as an alternative to transporting the offender to the State facility.

#### **RECOMMENDATION 6:**

The Committee recommends that the Joint Legislative Oversight Committee on Health and Human Services study whether individuals with serious mental health issues, intellectual or developmental disabilities, and lack of capacity to proceed should be released from jail to an appropriate mental health placement on a more expedited basis, and if so, the best method and process to facilitate that recommendation.

## **COMMITTEE MEMBERSHIP**

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2011-2012

# President Pro Tempore of the Senate Appointments:

Senator, Co-Chair

# **Speaker of the House of Representatives Appointments:**

Representative Shirley Randleman, Co-Chair

Representative Justin Burr Representative John Faircloth Representative Pat Hurley Representative Frank McGuirt

# **COMMITTEE CHARGE**

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XXXXXXX

## STATUTORY AUTHORITY

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# NORTH CAROLINA GENERAL STATUTES ARTICLE 6B.

### Legislative Research Commission.

#### § 120-30.17. Powers and duties.

The Legislative Research Commission has the following powers and duties:

- Pursuant to the direction of the General Assembly or either house thereof, or of the chairmen, to make or cause to be made such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner.
- (2) To report to the General Assembly the results of the studies made. The reports may be accompanied by the recommendations of the Commission and bills suggested to effectuate the recommendations.
- (3), (4) Repealed by Session Laws 1969, c. 1184, s. 8.
- (5), (6) Repealed by Session Laws 1981, c. 688, s. 2.
- (7) To obtain information and data from all State officers, agents, agencies and departments, while in discharge of its duty, pursuant to the provisions of G.S. 120-19 as if it were a committee of the General Assembly.
- (8) To call witnesses and compel testimony relevant to any matter properly before the Commission or any of its committees. The provisions of G.S. 120-19.1 through G.S. 120-19.4 shall apply to the proceedings of the Commission and its committees as if each were a joint committee of the General Assembly. In addition to the other signatures required for the issuance of a subpoena under this subsection, the subpoena shall also be signed by the members of the Commission or of its committee who vote for the issuance of the subpoena.
- (9) For studies authorized to be made by the Legislative Research Commission, to request another State agency, board, commission or committee to conduct the study if the Legislative Research Commission determines that the other body is a more appropriate vehicle with which to conduct the study. If the other body agrees, and no legislation specifically provides otherwise, that body shall conduct the study as if the original authorization had assigned the study to that body and shall report to the General Assembly at the same time other studies to be conducted by the Legislative Research Commission are to be reported. The other agency shall conduct the transferred study within the funds already assigned to it.

# LEGISLATIVE PROPOSALS

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## GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2011

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D

#### **BILL DRAFT 2011-SA-18 [v.6] (03/01)**

# (THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION) 3/27/2012 4:54:46 PM

Short Title:	Incapacity to Proceed Amendments.			
Sponsors:				
Referred to:				

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS GOVERNING INCAPACITY TO PROCEED AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION.

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

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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 eapacity; the capacity. The sheriff shall return the defendant to the county when notified that the evaluation has been completed: the 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; thecourt. The report is admissible at the hearing.

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

A presiding district or superior court judge of this State who orders an (4) examination pursuant to subdivision (1) or (2) of this subsection shall order the release of relevant confidential information to the examiner, including but not limited to, the warrant or indictment, arrest records, the law enforcement incident report, the defendant's criminal record, iail records, any prior medical and mental health records of the defendant, and any school records of the defendant, after providing the defendant 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 subdivision 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 subdivision, may be examined only by order of the court.

- If the report pursuant to subdivision (1) or (2) of subsection (b) of this section indicates The order of the court shall contain findings of fact to support its determination of the defendant's capacity to proceed. The parties may stipulate that the defendant is capable of proceeding, but shall not be allowed to stipulate that the defendant lacks capacity to proceed. If the court concludes 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.
- Reports made to the court pursuant to this section shall be completed and provided to the court as follows:
  - The report in a case of a defendant charged with a misdemeanor shall (1) be completed and provided to the court no later than 10 day following the completion of the examination for a defendant who was in custody

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at the time the examination order was entered, and no later than 20 days following the completion of the examination for a defendant who was not in custody at the time the examination order was entered.

- (2) The report in the case of a defendant charged with a felony shall be completed and provided to the court no later than 30 days following the completion of the examination.
- (3) In cases where the defendant challenges the determination made by the court ordered examiner or the State facility and the court orders an independent psychiatric examination, that examination 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 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 defendant 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.

- (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. If the defendant is being held in the custody of the sheriff, the clerk shall send a copy of the covering statement to the sheriff. The sheriff, and any persons employed by the sheriff, shall maintain the copy of the covering statement as a confidential record. A copy of the full report shall be forwarded to defense counsel, or to the defendant if he is not represented by eounsel provided, if counsel. 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 as provided in G.S. 122C-54(b). 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."

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

"(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. The court shall also order that the defendant shall be examined to determine whether the defendant has the capacity to proceed prior to release from custody. A report of the examination shall be provided pursuant to G.S. 15A-1002. 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

Appendix D

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."

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

## "§ 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—has been determined by the institution or individual having custody to have gained capacity to proceed, the individual or institution must notifyshall provide written notification to the clerk in the county in which the criminal proceeding is pending. The clerk must notify the sheriff to shall provide written notification to the district attorney, the defendant's attorney and the sheriff. The sheriff shall return the defendant to the county for supplemental hearing pursuant to G.S. 15A-1007, if conducted, and trial, and to-hold him—the defendant for supplemental hearing and trial, subject to the orders of the court entered pursuant to G.S. 15A-1004."

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

### "§ 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 trial in accordance with G.S. 15A-1004(e) and G.S. 15A-1006, the clerk shall notify the district attorney. Upon receiving the notification, the district attorney shall calendar the matter for hearing at the next available term of court, but no later than 30 days after receiving the notification. 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.
- (d) If the court determines in a supplemental hearing that a defendant has gained the capacity to proceed, the case shall be calendared for trial at the earliest practicable time. Continuances that extend beyond 60 days after initial calendaring of the trial shall be granted only in extraordinary circumstances when necessary for the proper administration of justice, and the court shall issue a written order stating the grounds for granting the continuance."

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

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

- (a) When a defendant lacks capacity to proceed, the court may shall dismiss the charges:charges upon the earliest of the following occurrences:
  - (1) When it appears to the satisfaction of the court that the defendant will not gain capacity to proceed; or proceed.
  - (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

	Appendix D			
1	period of confinement for the crime or crimes charged; or maximum			
2	term of imprisonment permissible for prior record level VI for felonies			
3	or prior conviction level III for misdemeanors for the most serious			
4	offense charged.			
5	(3) Upon the expiration of a period of five years from the date of			
6	determination of incapacity to proceed in the case of misdemeanor			
7	charges and a period of 10 years in the case of felony charges.			
8	(b) A dismissal entered pursuant to subdivision (a)(2) of this section shall be			
9	without leave.			
0	(c) A dismissal entered pursuant to subdivision (a)(1) or (a)(3) of this section			
1	shall be issued without prejudice to the refilling of the charges. Upon the defendant			
2	becoming capable of proceeding, the prosecutor may reinstitute proceeding dismissed			
3	pursuant to subdivision (a)(1) or (a)(3) by filing written notice with the clerk, with the			
4	defendant and with the defendant's attorney of record.			
5	(d) Dismissal of criminal charges pursuant to this section shall be upon motion of			
6	the prosecutor or the defendant, or upon the court's own motion."			
.7 '	SECTION 6. G.S. 15A-1009 is repealed.			
8	SECTION 7. G.S. 122C-54(b) reads as rewritten:			
9	"(b) If an individual is a defendant in a criminal case and a mental examination of			
20	the defendant has been ordered by the court as provided in G.S. 15A-1002, the facility			
21	shall send the results or the report of the mental examination to the clerk of court, to the			
22	district attorney or prosecuting officer, and to the attorney of record for the defendant as			
23	provided in G.S. 15A-1002(d). The report shall contain a treatment recommendation, if			
24	any, and any opinion as to whether there is a likelihood that the defendant will gain the			
25	capacity to proceed."			
26	<b>SECTION 8.</b> G.S. 122C-263(d) reads as rewritten:			
27	"(d) After the conclusion of the examination the physician or eligible psychologist			
28	shall make the following determinations:			
29	(1) If the physician or eligible psychologist finds that:			
30	a. The respondent is mentally ill;			
31	b. The respondent is capable of surviving safely in the community			
32	with available supervision from family, friends, or others;			
33	c. Based on the respondent's psychiatric history, the respondent is			
34	in need of treatment in order to prevent further disability or			
35	deterioration that would predictably result in dangerousness as			
36	defined by G.S. 122C-3(11); and			
37	d. The respondent's current mental status or the nature of the			
88	respondent's illness limits or negates the respondent's ability to			
39	make an informed decision to seek voluntarily or comply with			
10	recommended treatment.			
11	The physician or eligible psychologist shall so show on the			
12	examination report and shall recommend outpatient commitment. In			
13	addition the examining physician or eligible psychologist shall show			
14	the name, address, and telephone number of the proposed outpatient			
<b>1</b> 5	treatment physician or center. The person designated in the order to			

provide transportation shall return the respondent to the respondent's

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(2)

regular residence or, with the respondent's consent, to the home of a consenting individual located in the originating county, and the respondent shall be released from custody. Notwithstanding the provisions of this subdivision, if the order placing respondent in custody was issued pursuant to G.S. 15A-1003, after making the determination required by this subdivision, the respondent shall be examined for capacity to proceed and released pursuant to the requirements of G.S. 15A-1004(c).

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If the physician or eligible psychologist finds that the respondent is mentally ill and is dangerous to self, as defined in G.S. 122C-3(11)a., or others, as defined in G.S. 122C-3(11)b., the physician or eligible psychologist shall recommend inpatient commitment, and shall so show on the examination report. If, in addition to mental illness and dangerousness, the physician or eligible psychologist also finds that the respondent is known or reasonably believed to be mentally retarded, this finding shall be shown on the report. The law enforcement officer or other designated person shall take the respondent to a 24-hour facility described in G.S. 122C-252 pending a district court hearing. If there is no area 24-hour facility and if the respondent is indigent and unable to pay for care at a private 24-hour facility, the law enforcement officer or other designated person shall take the respondent to a State facility for the mentally ill designated by the Commission in accordance with G.S. 143B-147(a)(1)a. for custody, observation, and treatment and immediately notify the clerk of superior court of this action. If a 24-hour facility is not immediately available or appropriate to the respondent's medical condition, the respondent may be temporarily detained under appropriate supervision at the site of the first examination, provided that at any time that a physician or eligible psychologist determines that the respondent is no longer in need of inpatient commitment, the proceedings shall be terminated and the respondent transported and released in accordance with subdivision (3) of this subsection. However, if the physician or eligible psychologist determines that the respondent meets the criteria for outpatient commitment, as defined in subdivision (1) of this subsection, the physician or eligible psychologist may recommend outpatient commitment, and the respondent shall be transported and released in accordance with subdivision (1) of this subsection. Any decision to terminate the proceedings or to recommend outpatient commitment after an initial recommendation of inpatient commitment shall be documented and reported to the clerk of superior court in accordance with subsection (e) of this section. If the respondent is temporarily detained and a 24-hour facility is not available or medically appropriate seven days after the issuance of the custody order, a physician or psychologist shall report this fact to the clerk of superior court and the proceedings shall be terminated. Termination of proceedings pursuant to this subdivision shall not prohibit or prevent

#### Appendix D

the initiation of new involuntary commitment proceedings when appropriate. Affidavits filed in support of proceedings terminated pursuant to this subdivision may not be submitted in support of any subsequent petitions for involuntary commitment. If the affiant initiating new commitment proceedings is a physician or eligible psychologist, the affiant shall conduct a new examination and may not rely upon examinations conducted as part of proceedings terminated pursuant to this subdivision.

In the event an individual known or reasonably believed to be mentally retarded is transported to a State facility for the mentally ill, in no event shall that individual be admitted to that facility except as follows:

- a. Persons described in G.S. 122C-266(b);
- b. Persons admitted pursuant to G.S. 15A-1321;
- c. Respondents who are so extremely dangerous as to pose a serious threat to the community and to other patients committed to non-State hospital psychiatric inpatient units, as determined by the Director of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services or his designee; and
- d. Respondents who are so gravely disabled by both multiple disorders and medical fragility or multiple disorders and deafness that alternative care is inappropriate, as determined by the Director of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services or his designee.

Individuals transported to a State facility for the mentally ill who are not admitted by the facility may be transported by law enforcement officers or designated staff of the State facility in State-owned vehicles to an appropriate 24-hour facility that provides psychiatric inpatient care.

No later than 24 hours after the transfer, the responsible professional at the original facility shall notify the petitioner, the clerk of court, and, if consent is granted by the respondent, the next of kin, that the transfer has been completed.

Notwithstanding the provisions of this subdivision, if the order placing respondent in custody was issued pursuant to G.S. 15A-1003, prior to any release from custody pursuant to this subdivision, the respondent shall be examined for capacity to proceed and released pursuant to the requirements of G.S. 15A-1004(c).

(3) If the physician or eligible psychologist finds that neither condition described in subdivisions (1) or (2) of this subsection exists, the proceedings shall be terminated. The person designated in the order to provide transportation shall return the respondent to the respondent's regular residence or, with the respondent's consent, to the home of a consenting individual located in the originating county and the respondent shall be released from custody. Notwithstanding the

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provisions of this subdivision, if the order placing respondent in custody was issued pursuant to G.S. 15A-1003, after making the determination required by this subdivision, the respondent shall be examined for capacity to proceed and released pursuant to the requirements of G.S. 15A-1004(c)."

The Commission for Mental Health, Developmental SECTION 9. Disabilities and Substance Abuse Services shall develop and adopt rules by December 1, 2012, to require forensic evaluators appointed pursuant to 15A-1002(b) to meet the following requirements:

- (1) Complete all training requirements necessary to be credentialed as a certified forensic evaluator.
- (2) Attend annual continuing education seminars that provide continuing education and training in conducting forensic evaluations and screening examinations of defendants to determine capacity to proceed and preparation of written reports required by law.

The Commission for Mental Health, Developmental SECTION 10. Disabilities and Substance Abuse Services shall, by December 1, 2012, adopt guidelines for treatment of individuals who are involuntarily committed following a determination of incapacity to proceed and a referral pursuant to G.S. 15A-1003. The guidelines shall require a treatment plan that uses best practices in an effort to restore the individual's capacity to proceed in the criminal matter.

SECTION 11. Sections 1 through 8 of this act become effective December 1, 2012, and apply to offenses committed on or after that date. The remainder of this act is effective when it becomes law.

Legislative Research Commission Committee on Incapacity to Proceed

April 17, 2012

moves to amend the report on page 18 to read as					
follows:					
RECOMMENDATION 5:					
The Committee recommends that the Joint Legislative Oversight Committee on Health and Human Services study the issue of transporting defendants who are being evaluated for determination of capacity to proceed, or who have been found incapable of proceeding. Possible issues to study include: (1) whether the same-gender transportation requirement of G.S. 122C-251 should be repealed; (2) whether it would be appropriate and feasible to develop a system where evaluators from the State facility could evaluate offenders charged with lower level felonies on-site in the county where the charges are pending as an alternative to transporting the offender to the State facility; and (3) whether forensic evaluators can be assigned to each of the three State psychiatric hospitals to minimize the transportation demands on local law enforcement agencies.					
SIGNED Amendment Sponsor					
SIGNED Committee Chair if Senate Committee Amendment					
ADOPTED FAILED TABLED					



\_\_\_\_\_ Bill \_\_\_\_\_

	A	SA-46 [v.1]	(to be filled in by Principal Clerk) Page 1 of 1				
	Comm. Sub.		Data				
	Amends Title	EINOJ	Date	,2012			
	Representativ	/e					
1 2 3 <b>1</b>		end the bill on page 2, line 41 20" and inserting "30".					
	SIGNED	Amendment Spons	or				
	SIGNED	Committee Chair if Senate Comm	ittee Amendment				
	ADOPTED	FAILED	TAF	BLED			



## Legislative Research Commission Committee on Incapacity to Proceed

April 17, 2012

	Kep.	Hurley	moves to	amend the	report of	n page	18 to	read as
follows:	'							
RECOMME	ENDATI	ON 5:						
Human Service determination issues to stude 251 should be where evaluated felonies on-soffender to the three State enforcement	vices study of capa dy include be repealed ators from the he State psychiat agencies		transporting who have be same-gende would be apity could ever charges are hether forens minimize to	defendants een found in er transporta opropriate a aluate offer pending as sic evaluator	who are capable of the capable of th	e being f proceed irement le to deverged with tive to the assigned	evaluated ing. of G.S. velop at the lower ansportation and the each of the eac	ated for Possible S. 122C- a system ver lever the of the of the of the system.
SIGNED	Tal	Amendmen	t Sponsor					
SIGNED		ttee Chair if Senate			<del></del>			
	Commit	tee Chair if Senate	e Committee	Amendmen	t			
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\_\_\_\_\_ Bill \_\_\_\_\_

\_\_\_\_\_ FAILED \_\_\_\_\_

TABLED

ADOPTED



#### NORTH CAROLINA GENERAL ASSEMBLY

#### LEGISLATIVE RESEARCH COMMISSION

STATE LEGISLATIVE BUILDING RALEIGH, NC 27601



April 17, 2012

#### TO THE MEMBERS OF THE LEGISLATIVE RESEARCH COMMISSION:

Attached for your consideration is the report to the 2012 Regular Session of the 2011 General Assembly. This report was prepared by the Legislative Research Commission's Committee on Incapacity to Proceed, pursuant to G.S. 120-30.17(1).

Representative Shirley Randleman

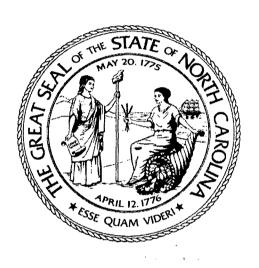
Chair

Chair Committee on Incapacity to Proceed Legislative Research Commission This page intentionally left blank

#### LEGISLATIVE RESEARCH COMMISSION

# INCAPACITY TO PROCEED COMMITTEE

## NORTH CAROLINA GENERAL ASSEMBLY



REPORT TO THE
2012 SESSION
of the
2011 GENERAL ASSEMBLY
OF NORTH CAROLINA

**APRIL, 2012** 

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## TRANSMITTAL LETTER

April 17, 2012

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# TO THE MEMBERS OF THE 2012 REGULAR SESSION OF THE 2011 GENERAL ASSEMBLY

The Legislative Research Commission herewith submits to you for your consideration its report and recommendations to the 2012 Regular Session of the 2011 General Assembly. The report was prepared by the Legislative Research Commission's Committee on Incapacity to Proceed, pursuant to G.S. 120-30.70(1).

Respectfully submitted,

Senator Philip E. Berger President Pro Tempore of the Senate

Representative Thomas R. Tillis Speaker of the House of Representatives

Co-Chairs Legislative Research Commission This page intentionally left blank

# LEGISLATIVE RESEARCH COMMISSION MEMBERSHIP

#### [Back to Top]

#### 2011 - 2012

**President Pro Tempore of the Senate** 

Senator Philip E. Berger

Co-Chair

Senator Thomas M. Apodaca

**Acting Co-Chair** 

Senator Peter S. Brunstetter

Senator Linda D. Garrou

Senator Martin L. Nesbitt, Jr. Senator Richard Y. Stevens

**Speaker of the House of Representatives** 

Representative Thomas R. Tillis

Co-Chair

Representative Timothy K. Moore

**Acting Co-Chair** 

Representative John M. Blust

Representative Justin P. Burr

Representative Mike D. Hager

Representative Edith D. Warren

## **PREFACE**

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The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is the general purpose study group in the Legislative Branch of State Government. The Commission is co-chaired by the President Pro Tempore of the Senate and the Speaker of the House of Representatives and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of an investigation into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

The Legislative Research Commission authorized the study of Incapacity to Proceed, under authority of G.S. 120-30.17(1). The Committee was chaired by Representative Shirley Randleman.. The full membership of the Committee is listed under Committee Membership. A committee notebook containing the committee minutes and all information presented to the committee will be filed in the Legislative Library by the end of the 2011-2012 biennium.

### **COMMITTEE PROCEEDINGS**

#### [Back to Top]

The Legislative Research Commission's Committee on Incapacity to Proceed met four times after the 2011 Regular Session. The Committee's Charge can be found <a href="here">here</a>. The following is a brief summary of the Committee's proceedings. Detailed minutes and information from each Committee meeting are available in the Legislative Library.

The Legislative Research Commission Committee on Incapacity to Proceed was established to consider the adequacy of the involuntary commitment process for a criminal defendant who lacks the capacity to proceed to trial. The Committee was authorized to consider the impact of current law on the limited resources of local law enforcement, hospitals, mental health facilities, and the State's court system while balancing the rights of the accused, victims, and the safety and the general welfare of the public. The Committee was also authorized to consider options for determining whether a defendant is likely to attain the capacity to proceed to trial in the foreseeable future and at what point in the process that determination should be made.

The Committee met four times from November 9, 2011, to April 17, 2012. At each meeting, the Committee provided interested parties an opportunity to be heard on the issues and received public comment. Detailed minutes and information from each Commission meeting are available in the Legislative Library.

#### November 9, 2011 Meeting

The first meeting of the Legislative Research Commission Subcommittee on Incapacity to Proceed was held on November 9, 2011. Following introductions of those present and opening remarks by Chair Shirley Randleman, the Committee adopted its operating budget. The following presentations were made:

- Committee co-counsel Hal Pell described the genesis of the current procedures relating to a defendant's incapacity to proceed and the need to comply with constitutional due process and equal protection concerns addressed in the 1972 United States Supreme Court case, *Jackson v. Indiana*.
- Committee co-counsel Janice Paul provided the background and overview of the North Carolina laws governing incapacity to proceed and the civil commitment process. A PowerPoint presentation is included in the Committee minutes.
- Chair Randleman described the situation that arose within her community which prompted her to request a study. She reiterated that the Committee's

mission is to promote efficiency and safeguards for everyone, including the general public.

- John Rubin, UNC School of Government noted that the SOG conducts training, consultation, and research for individuals, courts, and the criminal justice system. He discussed the legal standard which applies to incapacity to proceed, which differs from that applied to civil commitment proceedings.
- Brad Greenway, District Attorney for the 29A Prosecutorial District, discussed specific concerns that arise when a defendant has committed a crime, is found incapable to proceed, might never gain the capacity to proceed, but does not meet commitment criteria.
- Andrew Cagle, North Carolina Sheriffs Association, expressed concern over manpower and actual transportation costs associated with transporting defendants between jails and mental health facilities.
- Dr. Mark Hazelrigg, Director of Outpatient Evaluations at Central Regional Hospital, said that the differences in the legal standard for capacity to proceed and the standard for involuntary commitment cause a circular system, and expressed concern that there is no statutory mandate or even suggestion that hospitals provide services designed to restore an individual's capacity to proceed.
- Richard Slipsky, Special Deputy Attorney General, observed that most of the
  cases start in Superior Court, but after a defendant is released from a
  commitment, the case comes back in through a District/jail court. He
  expressed concern about transportation costs as well as the cost of
  maintaining someone in a state hospital who does not need to be there. He
  echoed Dr. Hazelrigg's concern that the statutes do not specify restorative
  measures for capacity, even though most patients who are confined in a
  hospital would like to have their criminal charges resolved.

The Chair then opened the floor for discussion and questions.

#### January 11, 2012 Meeting

In its second meeting on January 11, 2012, the Committee had a round-table discussion of various agencies' roles and interest in the incapacity to proceed process, any perceived problems, and potential solutions to those problems. Chair Randleman stressed the importance of coming up with draft legislation that can proceed through the General Assembly during the 2012 Short Session. Details of this discussion are contained in the Committee minutes.

John Rubin, UNC School of Government, presented case studies involving both misdemeanor and felony offenders whose capacity to proceed was questioned.

The floor was opened for questions and comment. Information was exchanged about the following:

- Who is qualified to conduct local forensic examinations;
- o The time frame time reporting by the regional hospital;
- o The procedure after individuals are released back to jail;
- o Problems of decompensating in the jails;
- o Issues relating to dismissal of charges;
- Notification to the court and interested parties of the defendant's mental health status;
- Subsequent hearings on restoration of capacity;
- o Problems relating to individuals who are housed as safekeepers at Central Prison and who are not receiving mental health treatment;
- o Approaches to expedite the process of screening and examination;
- o Tracking and monitoring;
- o Privacy issues.

#### Recommendations included:

 The need for judges to take evidence and make findings of fact on capacity to proceed;

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- o Specific changes to G.S. 15A-1008 relating to dismissal;
- o The repeal of G.S. 15A-1009 concerning dismissal with leave when a defendant is found incapable of proceeding;
- o Credentialing of forensic examiners.;
- Authorizing examiners to have access to many pieces of information (mental health treatment, criminal background, jail records, indictments, and police investigative reports);
- o Mandated treatment to restore an individual's capacity to proceed;
- o Implementation of a process to allow forensic units to re-evaluate an individual's capacity before being returned to jail;
- Mandatory training of judges, attorneys, and law enforcement personnel regarding incapacity to proceed and commitment procedures;
- Enhanced coordination, communication between various agencies, and accountability within the process;
- o Establishing time limits on the proceedings;
- o Greater training of examiners to identify and treat specific mental health disabilities, the establishment of specialized facilities for individuals with such disabilities, and the recognition that people with certain disabilities will most likely never be found capable to proceed in court.

### February 8, 2012 Meeting

The Committee held its third meeting on February 8, 2012. The meeting's focus was on discussing proposed legislation and recommendations designed to make improvements in the capacity to proceed process. The following issues and proposals were discussed:

- Training for local forensic evaluators.
- Re-evaluation of defendants for a capacity determination prior to being returned to the jail from a state facility.
- Forensic evaluators' access to records.
- Time limits for forensic evaluations.
- Reporting a defendant's level of cooperation with the forensic examination.
- Minimum period of inpatient evaluation and observation.
- Requiring that defendants receive treatment to restore capacity to proceed.
- Reports to the court, parties, and communication and tracking issues.
- Notices of supplemental hearings.
- Dismissal of criminal charges.
- Requirement that court make findings of fact as to capacity to proceed.
- Methods of expediting cases for trial.
- Pretrial release for individuals with intellectual or developmental disabilities.
- Transportation issues.
- Bond, placement and other pretrial release issues for individuals with serious mental health issues.

Details of the discussion are contained in the Committee minutes.

After receiving input from Committee members and interested persons, the Committee voted that the General Assembly enact legislation to make changes to the process and procedures regarding incapacity to proceed, as follows:

- To provide that evaluation for misdemeanants be conducted locally only, and not at state facilities.
- To authorize a judge to order the release of confidential information to the forensic examiner.
- To require a court order to include findings of fact to support its determination regarding capacity to proceed.
- To provide time limits for reports to the court.
- To provide that the sheriff receive a copy of the covering statement of the forensic examiner's final report.
- To require that a defendant be examined for a determination of capacity to proceed prior to release from an involuntary civil commitment.
- To specify procedures relating to the return of the defendant for trial upon gaining capacity to proceed.

- To require expedited calendaring of cases for trial after a defendant gains capacity to proceed.
- To require dismissal of criminal charges in specified circumstances.
- To require that reports contain treatment recommendations, if any.
- To make conforming changes to G.S. Chapter 122C.

The Committee voted to include the following possible recommendations in its draft final report:

- That the Committee on Justice and Public Safety study the possibility of mandating that all law enforcement officers have crisis intervention training in order to recognize mental health issues and identify individuals with intellectual/developmental disabilities and to better deal with individuals with mental health issues or intellectual/developmental disabilities during the period of transportation and custody.
- That the Administrative Office of the Courts, in consultation with the School
  of Government, study whether defense attorneys, prosecutors and judges
  should be required to receive specific training on recognizing signs of mental
  illness and dealing with defendants that may be incapable of proceeding, and
  report the results of that study to the Committee on Justice and Public Safety.
- That the Joint Legislative Oversight Committee on Health and Human Services study the issue of transporting defendants who are being evaluated for determination of capacity to proceed, or who have been found incapable of proceeding. Possible issues to study include, whether the same-gender transportation requirement of G.S. 122C-251 should be repealed and whether it would be appropriate and feasible to develop a system where evaluators from the State facility could evaluate offenders charged with lower level felonies on-site in the county where the charges are pending as an alternative to transporting the offender to the State facility.
- That the Joint Legislative Oversight Committee on Health and Human Services study whether individuals with serious mental health issues or intellectual/developmental disabilities and lack of capacity to proceed should be released from jail to an appropriate mental health placement on a more expedited basis, and if so, the best method and process to facilitate that recommendation.

Rep. Burr informed the Committee that the Joint Legislative Oversight Committee on Health and Human Services was already considering the issue of whether it would be appropriate and feasible to open forensic units specifically focused on evaluating and providing habilitative services for individuals with intellectual or developmental disabilities and specialized in the care of incarcerated individuals diagnosed with intellectual or developmental disabilities.

# FINDINGS AND RECOMMENDATIONS

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#### **FINDINGS:**

The Committee finds that comprehensive procedural changes need to be made in the process relating to determinations of a criminal defendant's incapacity to proceed to trial, in view of limited resources of law enforcement, hospitals, and mental health facilities, in consideration of a defendant's legal and mental status as they relate to providing a fair trial, and in order to promote efficiency in the overall judicial process in matters relating to incapacity to proceed. As a result of these findings, the Committee makes the following Recommendations:

#### **RECOMMENDATION 1:**

The Committee recommends that the General Assembly enact legislation (attached) to make changes to the process and procedures regarding incapacity to proceed.

#### **RECOMMENDATION 2:**

The Committee recommends that the Committee on Justice and Public Safety study the possibility of mandating that all law enforcement officers have crisis intervention training in order to recognize mental health issues and to identify individuals with intellectual or developmental disabilities during period of transportation and custody and to interact with them appropriately.

#### **RECOMMENDATION 3:**

The Committee recommends that the Administrative Office of the Courts, in consultation with the School of Government, study whether defense attorneys, prosecutors and judges should be required to receive specific training on recognizing signs of mental illness and intellectual or developmental disabilities and dealing with defendants who may be incapable of proceeding, and report the results of that study to the Committee on Justice and Public Safety.

#### **RECOMMENDATION 4:**

The Committee recommends that the Joint Legislative Oversight Committee on Health and Human Services continue to study whether it would be appropriate and feasible to open forensic units specifically focused on evaluating and providing habilitative services for individuals with intellectual or developmental disabilities and specialized in the care of incarcerated individuals diagnosed with intellectual or developmental disabilities.

#### **RECOMMENDATION 5:**

The Committee recommends that the Joint Legislative Oversight Committee on Health and Human Services study the issue of transporting defendants who are being evaluated for determination of capacity to proceed, or who have been found incapable of proceeding. Possible issues to study include: (1) whether the samegender transportation requirement of G.S. 122C-251 should be repealed; (2) whether it would be appropriate and feasible to develop a system where evaluators from the State facility could evaluate offenders charged with lower level felonies onsite in the county where the charges are pending as an alternative to transporting the offender to the State facility; and (3) whether forensic evaluators can be assigned to each of the three State psychiatric hospitals to minimize the transportation demands on local law enforcement agencies.

#### **RECOMMENDATION 6:**

The Committee recommends that the Joint Legislative Oversight Committee on Health and Human Services study whether individuals with serious mental health issues, intellectual or developmental disabilities, and lack of capacity to proceed should be released from jail to an appropriate mental health placement on a more expedited basis, and if so, the best method and process to facilitate that recommendation.

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# **COMMITTEE MEMBERSHIP**

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2011-2012

# **Speaker of the House of Representatives Appointments:**

Representative Shirley Randleman, Co-Chair

Representative Justin Burr Representative John Faircloth Representative Pat Hurley Representative Frank McGuirt

# **COMMITTEE CHARGE**

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Incapacity to Proceed (H.J.R. 612 - Randleman, Hurley) - The Commission may study the adequacy of the involuntary commitment process for a criminal defendant who lacks the capacity to proceed to trial. In its study, the Commission may consider the impact of current law on the limited resources of local law enforcement, hospitals, mental health facilities, and the State's court system while balancing the rights of the accused, victims, and the safety and the general welfare of the public. The Commission may also consider options for determining whether a defendant is likely to attain the capacity to proceed to trial in the foreseeable future and at what point in the process that determination should be made. The Commission may evaluate the statutory option of taking dismissals in these types of cases for defendants who are charged with nonviolent crimes and for defendants who are charged with violent crimes, how often that option is used, and at what point and under what circumstances that option should be used. In addition, the Commission may consider all of the following: issues related to transportation, including the frequency, distance, and cost associated with the required psychiatric evaluations; duration of involuntary commitment for defendants found incapable of proceeding to trial pursuant to Article 56 of Chapter 15A of the General Statutes and involuntarily committed pursuant to Part 7 of Article 5 of Chapter 122C of the General Statutes; and any other issues the Commission considers relevant to this topic.

# STATUTORY AUTHORITY

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# NORTH CAROLINA GENERAL STATUTES ARTICLE 6B.

## Legislative Research Commission.

#### § 120-30.17. Powers and duties.

The Legislative Research Commission has the following powers and duties:

- (1) Pursuant to the direction of the General Assembly or either house thereof, or of the chairmen, to make or cause to be made such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner.
- (2) To report to the General Assembly the results of the studies made. The reports may be accompanied by the recommendations of the Commission and bills suggested to effectuate the recommendations.
- (3), (4) Repealed by Session Laws 1969, c. 1184, s. 8.
- (5), (6) Repealed by Session Laws 1981, c. 688, s. 2.
- (7) To obtain information and data from all State officers, agents, agencies and departments, while in discharge of its duty, pursuant to the provisions of G.S. 120-19 as if it were a committee of the General Assembly.
- (8) To call witnesses and compel testimony relevant to any matter properly before the Commission or any of its committees. The provisions of G.S. 120-19.1 through G.S. 120-19.4 shall apply to the proceedings of the Commission and its committees as if each were a joint committee of the General Assembly. In addition to the other signatures required for the issuance of a subpoena under this subsection, the subpoena shall also be signed by the members of the Commission or of its committee who vote for the issuance of the subpoena.
- (9) For studies authorized to be made by the Legislative Research Commission, to request another State agency, board, commission or committee to conduct the study if the Legislative Research Commission determines that the other body is a more appropriate vehicle with which to conduct the study. If the other body agrees, and no legislation specifically provides otherwise, that body shall conduct the study as if the original authorization had assigned the study to that body and shall report to the General Assembly at the same time other studies to be conducted by the Legislative Research Commission are to be reported. The other agency shall conduct the transferred study within the funds already assigned to it.

# LEGISLATIVE PROPOSALS

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# GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2011

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# BILL DRAFT 2011-SA-18A [v.1] (03/01)

# (THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION) 4/24/2012 2:01:06 PM

Short Title: In	ncapacity to Proceed Amendments.	(Public)
Sponsors: .		
Referred to:		
	A BILL TO BE ENTITLED	
AN ACT TO A	A BILL TO BE ENTITLED  AMEND THE LAWS GOVERNING INCAPACITY TO PRO	OCEED AS
	ENDED BY THE LEGISLATIVE RESEARCH COMMISSION	
	ssembly of North Carolina enacts:	
SEC	TION 1. G.S. 15A-1002 reads as rewritten:	
"§ 15A-1002.	Determination of incapacity to proceed; evidence;	temporary
	mitment; temporary orders.	
	question of the capacity of the defendant to proceed may be r	
	by the prosecutor, the defendant, the defense counsel, or the	
	letail the specific conduct that leads the moving party to c	juestion the
	pacity to proceed.	
	in the capacity of the defendant to proceed is questioned, the	
_	to determine the defendant's capacity to proceed. If an exa	
	ant to subdivision (1) or (2) of this subsection, the hearing signature.	
	nation. Reasonable notice shall be given to the defendant and nd the defendant may introduce evidence. The court:	prosecutor,
(1)	May In the case of a defendant charged with a misdemeand	or felony
(1)	the court may appoint one or more impartial medical expert	
	forensic evaluators approved under rules of the Com	
	Mental Health, Developmental Disabilities, and Substa	
	Services, to examine the defendant and return a wr	
	describing the present state of the defendant's mer	
	reportshealth. Reports so prepared are admissible at the	
	the hearing. The court may call any expert so appointed to t	estify at the
	hearing; any expert so appointed may be called to testify at	
	by the court athearing, with or without the request of e	either <del>party;</del>
	<del>orparty.</del>	
(2)	In the case of a defendant charged with a misdemeanor or	
	examination pursuant to subsection (b)(1) of this section-	
	time in the case of a defendant charged with a felony, the	
	order the defendant to a State facility for the ment	ally ill for

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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 <del>capacity; the</del>capacity. The sheriff shall return the defendant to the county when notified that the evaluation has been completed; the 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 court. The report is admissible at the hearing.

- (3) Repealed by Session Laws 1989, c. 486, s. 1.
- A presiding district or superior court judge of this State who orders an (4) examination pursuant to subdivision (1) or (2) of this subsection shall order the release of relevant confidential information to the examiner, including but not limited to, the warrant or indictment, arrest records, the law enforcement incident report, the defendant's criminal record, jail records, any prior medical and mental health records of the defendant, and any school records of the defendant, after providing the defendant 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 subdivision shall not be construed to relieve any court of its duty to conduct hearings and make findings required under relevant federal law before ording 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 subdivision, may be examined only by order of the court.
- If the report pursuant to subdivision (1) or (2) of subsection (b) of this section indicates The order of the court shall contain findings of fact to support its determination of the defendant's capacity to proceed. The parties may stipulate that the defendant is capable of proceeding, but shall not be allowed to stipulate that the defendant lacks capacity to proceed. If the court concludes 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.
- Reports made to the court pursuant to this section shall be completed and provided to the court as follows:
  - The report in a case of a defendant charged with a misdemeanor shall (1) be completed and provided to the court no later than 10 day following the completion of the examination for a defendant who was in custody

- at the time the examination order was entered, and no later than 30 days following the completion of the examination for a defendant who was not in custody at the time the examination order was entered.
- (2) The report in the case of a defendant charged with a felony shall be completed and provided to the court no later than 30 days following the completion of the examination.
- (3) In cases where the defendant challenges the determination made by the court ordered examiner or the State facility and the court orders an independent psychiatric examination, that examination 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 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 defendant 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.

- (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.
- Any report made to the court pursuant to this section shall be forwarded to the (d) 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. If the defendant is being held in the custody of the sheriff, the clerk shall send a copy of the covering statement to the sheriff. The sheriff, and any persons employed by the sheriff, shall maintain the copy of the covering statement as a confidential record. 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 counsel. 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, as provided in G.S. 122C-54(b). 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."

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

"(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. The court shall also order that the defendant shall be examined to determine whether the defendant has the capacity to proceed prior to release from custody. A report of the examination shall be provided pursuant to G.S. 15A-1002. 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

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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."

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

## "§ 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 has been determined by the institution or individual having custody to have gained capacity to proceed, the individual or institution must notifyshall provide written notification to the clerk in the county in which the criminal proceeding is pending. The clerk must notify the sheriff to shall provide written notification to the district attorney, the defendant's attorney and the sheriff. The sheriff shall return the defendant to the county for supplemental hearing pursuant to G.S. 15A-1007, if conducted, and trial, and to hold him the defendant for supplemental hearing and trial, subject to the orders of the court entered pursuant to G.S. 15A-1004."

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

## "§ 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 trial in accordance with G.S. 15A-1004(e) and G.S. 15A-1006, the clerk shall notify the district attorney. Upon receiving the notification, the district attorney shall calendar the matter for hearing at the next available term of court, but no later than 30 days after receiving the notification. 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.
- (d) If the court determines in a supplemental hearing that a defendant has gained the capacity to proceed, the case shall be calendared for trial at the earliest practicable time. Continuances that extend beyond 60 days after initial calendaring of the trial shall be granted only in extraordinary circumstances when necessary for the proper administration of justice, and the court shall issue a written order stating the grounds for granting the continuance."

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

## "§ 15A-1008. Dismissal of charges.

- (a) When a defendant lacks capacity to proceed, the court may shall dismiss the charges: charges upon the earliest of the following occurrences:
  - (1) When it appears to the satisfaction of the court that the defendant will not gain capacity to proceed: or proceed.
  - When the defendant has been substantially deprived of his liberty for a period of time equal to or in excess of the maximum permissible

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regular residence or, with the respondent's consent, to the home of a consenting individual located in the originating county, and the respondent shall be released from custody. Notwithstanding the provisions of this subdivision, if the order placing respondent in custody was issued pursuant to G.S. 15A-1003, after making the determination required by this subdivision, the respondent shall be examined for capacity to proceed and released pursuant to the requirements of G.S. 15A-1004(c).

If the physician or eligible psychologist finds that the respondent is mentally ill and is dangerous to self, as defined in G.S. 122C-3(11)a., or others, as defined in G.S. 122C-3(11)b., the physician or eligible psychologist shall recommend inpatient commitment, and shall so show on the examination report. If, in addition to mental illness and dangerousness, the physician or eligible psychologist also finds that the respondent is known or reasonably believed to be mentally retarded, this finding shall be shown on the report. The law enforcement officer or other designated person shall take the respondent to a 24-hour facility described in G.S. 122C-252 pending a district court hearing. If there is no area 24-hour facility and if the respondent is indigent and unable to pay for care at a private 24-hour facility, the law enforcement officer or other designated person shall take the respondent to a State facility for the mentally ill designated by the Commission in accordance with G.S. 143B-147(a)(1)a. for custody, observation, and treatment and immediately notify the clerk of superior court of this action. If a 24-hour facility is not immediately available or appropriate to the respondent's medical condition, the respondent may be temporarily detained under appropriate supervision at the site of the first examination, provided that at anytime that a physician or eligible psychologist determines that the respondent is no longer in need of inpatient commitment, the proceedings shall be terminated and the respondent transported and released in accordance with subdivision (3) of this subsection. However, if the physician or eligible psychologist determines that the respondent meets the criteria for outpatient commitment, as defined in subdivision (1) of this subsection, the physician or eligible psychologist may recommend outpatient commitment, and the respondent shall be transported and released in accordance with subdivision (1) of this subsection. Any decision to terminate the proceedings or to recommend outpatient commitment after an initial recommendation of inpatient commitment shall be documented and reported to the clerk of superior court in accordance with subsection (e) of this section. If the respondent is temporarily detained and a 24-hour facility is not available or medically appropriate seven days after the issuance of the custody order, a physician or psychologist shall report this fact to the clerk of superior court and the proceedings shall be terminated. Termination of proceedings pursuant to this subdivision shall not prohibit or prevent

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the initiation of new involuntary commitment proceedings when appropriate. Affidavits filed in support of proceedings terminated pursuant to this subdivision may not be submitted in support of any subsequent petitions for involuntary commitment. If the affiant initiating new commitment proceedings is a physician or eligible psychologist, the affiant shall conduct a new examination and may not rely upon examinations conducted as part of proceedings terminated pursuant to this subdivision.

In the event an individual known or reasonably believed to be mentally retarded is transported to a State facility for the mentally ill, in no event shall that individual be admitted to that facility except as follows:

- a. Persons described in G.S. 122C-266(b);
- b. Persons admitted pursuant to G.S. 15A-1321;
- c. Respondents who are so extremely dangerous as to pose a serious threat to the community and to other patients committed to non-State hospital psychiatric inpatient units, as determined by the Director of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services or his designee; and
- d. Respondents who are so gravely disabled by both multiple disorders and medical fragility or multiple disorders and deafness that alternative care is inappropriate, as determined by the Director of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services or his designee.

Individuals transported to a State facility for the mentally ill who are not admitted by the facility may be transported by law enforcement officers or designated staff of the State facility in State-owned vehicles to an appropriate 24-hour facility that provides psychiatric inpatient care.

No later than 24 hours after the transfer, the responsible professional at the original facility shall notify the petitioner, the clerk of court, and, if consent is granted by the respondent, the next of kin, that the transfer has been completed.

Notwithstanding the provisions of this subdivision, if the order placing respondent in custody was issued pursuant to G.S. 15A-1003, prior to any release from custody pursuant to this subdivision, the respondent shall be examined for capacity to proceed and released pursuant to the requirements of G.S. 15A-1004(c).

(3) If the physician or eligible psychologist finds that neither condition described in subdivisions (1) or (2) of this subsection exists, the proceedings shall be terminated. The person designated in the order to provide transportation shall return the respondent to the respondent's regular residence or, with the respondent's consent, to the home of a consenting individual located in the originating county and the respondent shall be released from custody. Notwithstanding the

**SECTION 9.** The Commission for Mental Health, Developmental Disabilities and Substance Abuse Services shall develop and adopt rules by December 1, 2012, to require forensic evaluators appointed pursuant to 15A-1002(b) to meet the following requirements:

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

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

**SECTION 10.** The Commission for Mental Health, Developmental Disabilities and Substance Abuse Services shall, by December 1, 2012, adopt guidelines for treatment of individuals who are involuntarily committed following a determination of incapacity to proceed and a referral pursuant to G.S. 15A-1003. The guidelines shall require a treatment plan that uses best practices in an effort to restore the individual's capacity to proceed in the criminal matter.

**SECTION 11.** Sections 1 through 8 of this act become effective December 1, 2012, and apply to offenses committed on or after that date. The remainder of this act is effective when it becomes law.