

7.1 Overview

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A juvenile who lacks the mental capacity to proceed may not be subjected to an adjudicatory or dispositional proceeding in juvenile court. Several provisions of the Criminal Procedure Act, “Incapacity to Proceed,” apply to the court’s determination of whether a juvenile is capable of proceeding. G.S. 7B-2401. These statutes are G.S. 15A-1001, providing that proceedings cannot go forward when the juvenile is incapacitated; G.S. 15A-1002, setting forth procedures for determination of incapacity; and G.S. 15A-1003, containing procedures for the court to determine whether civil commitment proceedings should be instituted if the juvenile is found incapable of proceeding.

In practice, evaluation of a juvenile’s capacity to proceed may be quite different from that of an adult client. A juvenile may be functioning at a lower level than an adult simply by virtue of age or immaturity. It can be difficult to determine if the juvenile is simply immature or lacks the capacity to proceed, although extreme immaturity could be grounds for a finding of lack of capacity. *See infra* 7.5B, Test of Capacity.

This chapter will review the standard for capacity to proceed, the test for capacity, judicial procedures for a hearing on capacity, and considerations for counsel in representing a juvenile whose capacity may be in question.