

7.10 Post-Examination Procedure

- A. Reviewing the Examination Report
 - B. After Examination Finding Juvenile Capable of Proceeding
 - C. After Examination Finding Juvenile Incapable of Proceeding
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A. Reviewing the Examination Report

Counsel should carefully review the examination report once it is completed. For a helpful resource for understanding examination reports, see THOMAS GRISSO, *CLINICAL EVALUATIONS FOR JUVENILES' COMPETENCE TO STAND TRIAL: A GUIDE FOR LEGAL PROFESSIONALS* (Professional Resource Press, 2005). The book describes some of the clinical and psychological factors that are relevant to the question of the juvenile's capacity and explains what attorneys should expect to see in examination reports.

B. After Examination Finding Juvenile Capable of Proceeding

G.S. 15A-1002(b) states that the court "shall" hold a hearing to determine the juvenile's capacity to proceed after the capacity examination. However, the court might decline to hold a hearing if the evaluation report states that the juvenile is capable of proceeding and counsel does not request a hearing.

If defense counsel fails to request a hearing after the examination and the court fails to hold one, the juvenile's statutory right to a hearing will likely be deemed waived. *See State v. Young*, 291 N.C. 562, 568 (1977) (defendant waived right to a capacity hearing "by his failure to assert that right"). Nevertheless, as a constitutional matter the trial court must hold a hearing, even when defense counsel fails to request one, when the evidence raises a bona fide doubt as to the juvenile's capacity. *State v. McRae*, 139 N.C. App. 387, 391 (2000).

C. After Examination Finding Juvenile Incapable of Proceeding

The provisions of Chapter 15A-1004 through 15A-1008, which list the options available for resolution of a criminal case when the defendant is found incapable of proceeding, are not incorporated into the Juvenile Code. *See* G.S. 7B-2401. Counsel may consider the following alternatives.

Dismissal. Counsel may advocate to the prosecutor that dismissal is the appropriate resolution of the case when the juvenile lacks capacity to proceed. Arrangement for treatment or other plans to address the juvenile's underlying problems will bolster this argument. Dismissal is most appropriate if the juvenile's incapacitating condition is permanent or long-term or if the juvenile is in ongoing or residential treatment. *See also* 1 NORTH CAROLINA DEFENDER MANUAL § 2.8A, *Constitutional Backdrop* (2d ed. 2013) (discussing constitutional grounds for dismissal of charges against defendant who is

unlikely to gain capacity to proceed). Under earlier versions of the Juvenile Code, there was no provision that specifically authorized the State to dismiss a case. In 2015, the General Assembly amended G.S. 7B-2404 to include language expressly permitting prosecutors to dismiss juvenile petitions. 2015 N.C. Sess. Laws Ch. 58 (H 879). The new law, which is effective for offenses committed on or after December 1, 2015, does not provide any limitations on the grounds for dismissing a case. Thus, dismissal under G.S. 7B-2404 would be an appropriate alternative if the juvenile is incapable to proceed.

Hearing on capacity to proceed. If the prosecutor or court are unwilling to dismiss the case and counsel believes that the client is incapable of proceeding, counsel must request a formal hearing on the juvenile's capacity to proceed. G.S. 15A-1002(b). The statute now bars the parties from stipulating that the juvenile lacks capacity. The statute allows the parties to stipulate that the juvenile has the capacity to proceed, but a court may be unwilling to accept a stipulation if it has a bona fide doubt about capacity. *See supra* § 7.10B, After Examination Finding Juvenile Capable of Proceeding.