

## 7.5 Standard for Capacity to Proceed to Adjudication

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## 7.5 Standard for Capacity to Proceed to Adjudication

### A. Requirement of Capacity

Due process and North Carolina law prohibit the trial or punishment of a person who is legally incapable of proceeding. *See Drope v. Missouri*, 420 U.S. 162, 171–72 (1975); G.S. Ch. 15A, art. 56 Official Commentary (recognizing that North Carolina statutes on capacity to proceed codify the principle of law that a criminal defendant may not be tried or punished when he or she lacks mental capacity to proceed). The requirement of capacity to proceed applies to all phases of a juvenile proceeding. A juvenile may not be “tried, convicted, sentenced, or punished” if mentally incapacitated as defined by statute. G.S. 15A-1001(a); G.S. 7B-2401.

### B. Test of Capacity

**Generally.** G.S. 15A-1001(a) sets forth the general standard of capacity to proceed. Under the statute, a juvenile lacks capacity to proceed if, by reason of mental illness or defect, the juvenile is unable to:

- understand the nature and object of the proceedings;
- comprehend his or her situation in reference to the proceedings; or
- assist in the defense in a rational or reasonable manner.

**Mental illness or defect.** The above test has two parts. First, the juvenile must have a mental illness or defect. Conditions that do not constitute a mental illness or defect generally do not support a finding that a person is incapable to proceed. *See State v. Brown*, 339 N.C. 426 (1994) (holding that trial court properly concluded defendant was capable of proceeding where capacity examination indicated that defendant’s attitude, not a mental illness or defect, prevented him from assisting in his own defense); *State v. Aytche*, 98 N.C. App. 358 (1990) (upholding finding that the defendant was capable to stand trial despite evidence that the defendant experienced some back pain during trial).

If the juvenile has not been diagnosed with a specific mental illness but is unable to help defend the case because of age or immaturity, counsel should consider arguing that the juvenile’s age or immaturity are essentially a “mental defect” for the purpose of

determining capacity to proceed. *See generally Timothy J. v. Superior Court*, 150 Cal. App. 4th 847, 862 (2007) (holding that the juvenile’s developmental immaturity could result in incapacity to proceed despite lack of a specific mental illness or defect); *Tate v. State*, 864 So. 2d 44, 48 (Fla. Dist. Ct. App. 2003) (holding that a capacity evaluation was required due to the juvenile’s “extremely young age and lack of previous exposure to the judicial system”).

In the alternative, counsel should argue that the court can find the juvenile incapable to proceed without determining that the juvenile has a mental illness or defect because the standard for capacity under the Due Process Clause of the United States Constitution does not require a specific mental illness or defect. Instead, the standard is whether the juvenile has “sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding” and has “a rational as well as factual understanding of the proceedings against him.” *Dusky v. United States*, 362 U.S. 402, 402 (1960) (per curiam). The California Court in *Timothy J.* found that in determining whether the juvenile was capable “of understanding the proceedings and of cooperating with counsel,” the developmental immaturity of the juvenile could be considered without proof of a mental disorder or developmental disability. 150 Cal. App. 4th at 862. The Court discussed at length testimony presented concerning the developmental stage of the juvenile’s brain and thinking processes. *Id.* at 853–54.

**Capabilities.** Second, the mental condition must render the juvenile unable to perform at least one of the functions specified in G.S. 15A-1001(a). The existence of a mental condition alone does not necessarily mean that the juvenile lacks the capacity to proceed. *See State v. Willard*, 292 N.C. 567, 576–77 (1977) (amnesia does not per se render defendant incapable, although temporary amnesia may warrant continuance of trial); *In re I.R.T.*, 184 N.C. App. 579, 582–83 (2007) (although one evaluation noted “progressive decline in intellectual abilities,” both reports indicated juvenile could understand legal terms and procedures if explained in concrete terms); *In re Robinson*, 151 N.C. App. 733 (2002) (evidence sufficient to support court’s finding of capacity to proceed although private psychologist found moderate mental retardation and schizophreniform disorder).

The three functions listed in G.S. 15A-1001(a) are written in the disjunctive, which means that a juvenile’s inability to perform any individual function bars further proceedings. *See State v. Shytle*, 323 N.C. 684, 688 (1989); *State v. Jenkins*, 300 N.C. 578, 582–83 (1980). The Supreme Court and the Court of Appeals sometimes refer to a fourth condition of capacity: the ability to cooperate with counsel to the end that any available defense may be interposed. *See, e.g., State v. Jackson*, 302 N.C. 101, 104 (1981); *State v. O’Neal*, 116 N.C. App. 390, 395 (1994). The Supreme Court has held that trial courts need not make a specific finding on this fourth condition. *See Jenkins*, 300 N.C. at 583. Nevertheless, the court still appears to consider the condition to be a requirement of capacity, treating it as a subset of the statutory test. *See, e.g., Shytle*, 323 N.C. at 688–89.

### C. Medication

North Carolina courts have upheld rulings finding defendants who were on medication to be capable to proceed. *See State v. Buie*, 297 N.C. 159, 161 (1979) (upholding finding that defendant was capable of proceeding and stating that the “fact that defendant was competent only as a result of receiving medication does not require a different result”); *State v. Cooper*, 286 N.C. 549, 566 (1975) (medication was necessary to prevent exacerbation of mental illness and did not dull defendant’s mind), *disapproved on other grounds in State v. Leonard*, 300 N.C. 223 (1980); *State v. McRae*, 163 N.C. App. 359, 368 (2004) (trial court properly found defendant capable where there was evidence that he took antipsychotic medication during the trial).

It is less clear when the State can use forcible medication to render defendants and juveniles capable to proceed. North Carolina statutes do not specifically authorize treatment or medication to restore capacity. *See, e.g.*, G.S. 122C-54(b) (statute states that forensic examiner must provide treatment recommendation after completing capacity evaluation, but it does not specifically authorize treatment or medication to restore capacity); *see also* 1 NORTH CAROLINA DEFENDER MANUAL § 2.1C, Medication (2d ed. 2013).

In addition, the United States Supreme Court has set constitutional limits on forcible medication. The use of forcible medication to render an adult defendant capable to proceed violates the defendant’s right to due process unless it is (1) medically appropriate, (2) substantially unlikely to have side effects that might undermine a trial’s fairness, (3) is done only after considering less intrusive alternatives, and (4) is necessary to further important government trial-related issues. *Sell v. United States*, 539 U.S. 166, 179 (2003). The Court held that the use of forcible medication should be “rare” and occur only in “limited circumstances.” *Id.* at 169, 180. Applying the criteria in *Sell*, the Fourth Circuit held that the government could not use forcible medication to render the defendant capable to proceed because, among other things, the alleged crimes were non-violent and the defendant had already been confined for a significant amount of time as compared to her possible sentence. *United States v. White*, 620 F.3d 401, 413–14 (4th Cir. 2010). The Fourth Circuit also vacated an order permitting the State to forcibly medicate the defendant where the trial court failed to consider less intrusive means for administering medication, such as a court order backed by contempt sanctions. *United States v. Chatmon*, 718 F.3d 369, 376 (4th Cir. 2013).

### D. Time of Determination

The juvenile’s capacity to proceed is evaluated as of the time of the adjudicatory hearing or other proceeding. The question of capacity may be raised at any time by the juvenile, the court, or the prosecutor. *See* G.S. 15A-1002(a); *Drope v. Missouri*, 420 U.S. 162 (1975) (capacity issues may arise during trial). When the question of capacity arises before the adjudicatory hearing, the court should determine the question before proceeding with the hearing. *See State v. Silvers*, 323 N.C. 646, 653 (1989); *State v. Propst*, 274 N.C. 62, 69 (1968).

Because capacity to proceed is measured as of the time of the proceeding, more recent examinations or observations of the juvenile tend to carry more weight. *See State v. Silvers*, 323 N.C. 646, 654–55 (1989) (conviction vacated where trial judge based finding of capacity entirely on psychiatric examinations conducted three to five months before trial and excluded more recent observations by lay witnesses); *State v. Robinson*, 221 N.C. App. 509, 516 (2012) (trial judge erred in denying motion for capacity examination at beginning of trial; earlier evaluations finding defendant capable indicated that his condition could deteriorate, and defense counsel’s evidence in support of current motion for examination indicated that defendant’s mental condition had significantly declined); *State v. Reid*, 38 N.C. App. 547, 549–50 (1978) (trial court’s finding of capacity *not* supported by evidence where State’s expert testified as follows: defendant was suffering from chronic paranoid schizophrenia; defendant was capable at time of examination two to three months earlier, but condition could worsen without medication; and State’s expert had not reexamined defendant and had no opinion on defendant’s capacity at time of capacity hearing).

#### **E. Compared to Other Standards**

**Insanity.** Incapacity to proceed refers to the juvenile’s ability to understand and participate in the adjudicatory hearing and other proceedings. The question of whether the juvenile is capable to proceed is determined after a juvenile has been alleged to have committed a delinquent act and before or during the adjudicatory hearing on the allegations. In contrast, an insanity defense relates to the juvenile’s state of mind at the time the alleged delinquent act occurred. A juvenile who is “insane” at the time of hearing might be found incapable of proceeding. An insanity defense cannot be raised, however, unless the juvenile is capable of proceeding to the adjudicatory hearing. *See State v. Propst*, 274 N.C. 62, 69–70 (1968) (comparing capacity to proceed with insanity).

**Admission by the juvenile.** The standard of capacity for entering an admission to the allegations is the same as the standard of capacity to proceed to the adjudication hearing with the added proviso that the juvenile also must act knowingly and voluntarily in making any admission. *See Godinez v. Moran*, 509 U.S. 389, 398–99 (1993) (holding that the standard of capacity for a defendant to plead guilty is the same as the standard to stand trial); G.S. 7B-2407 (When admissions by juvenile may be accepted).

#### **F. Burden of Proof**

The juvenile has the burden of proof to show incapacity to proceed. *See In re H.D.*, 184 N.C. App. 188 (2007) (unpublished) (*citing State v. O’Neal*, 116 N.C. App. 390, 395 (1994)); *see also Medina v. California*, 505 U.S. 437, 450–51 (1992) (burden of proof to show incapacity to proceed may be placed on defendant). The burden may not be higher than by the preponderance of the evidence. *See Cooper v. Oklahoma*, 517 U.S. 348, 366–67 (1996).

### **G. Retrospective Capacity Determination**

If an appellate court finds that the trial court erroneously failed to determine the juvenile's capacity to proceed, the appellate court has two main options. First, the appellate court can remand the case for a new adjudication hearing. *State v. Robinson*, 221 N.C. App. 509, 516 (2012) (finding that the "proper remedy" where trial court proceeds to trial notwithstanding evidence that the defendant was incapable of proceeding is to vacate the judgment and remand for a new trial if and when defendant is capable of proceeding). Second, the appellate court can remand the case to the trial court to determine whether a retrospective capacity hearing is possible and, if so, determine whether the juvenile was capable of proceeding to trial. *State v. McRae (McRae I)*, 139 N.C. App. 387, 392 (2000) (first North Carolina case on issue authorizing such a hearing, but stating that such a hearing may be conducted "only if a meaningful hearing on the issue of the competency of the defendant at the prior proceedings is still possible"); *see also State v. Whitted*, 209 N.C. App. 522 (2011) (remanding to trial court to determine whether retrospective capacity hearing was possible). This remedy is disfavored. *See State v. McRae (McRae II)*, 163 N.C. App. 359, 367 (2004) (recognizing "the inherent difficulty in making such *nunc pro tunc* evaluations"). In the few cases in which retrospective capacity hearings were held and the results appealed, the court upheld the procedure. *See id.*; *State v. Blancher*, 170 N.C. App. 171, 174 (2005).