

7.7 Consequences of Questioning Capacity

- A. Potential Benefits
 - B. Potential Adverse Consequences
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While counsel has a good faith duty to ensure that the juvenile is legally capable of proceeding, counsel should be aware of the potential repercussions, positive and negative, of questioning capacity.

A. Potential Benefits

Some of the benefits of questioning capacity to proceed include the following:

- The petition may be dismissed by the prosecutor.
- The examination may lead to needed treatment.
- A juvenile found incapable of proceeding cannot be adjudicated delinquent, precluding both an adjudication and dispositional order.
- Even if the juvenile is found capable to proceed, the examination and hearing may generate evidence in support of a mental health defense, a favorable disposition, or a motion to suppress a confession on the ground that the juvenile did not knowingly and voluntarily waive *Miranda* or statutory rights.
- Information about the juvenile's mental condition may have a positive impact on discussions with the prosecutor and the juvenile court counselor.

B. Potential Adverse Consequences

Some of the adverse consequences that result from questioning capacity include the following:

- The evaluation may result in disclosure of information that is damaging to the juvenile at disposition and could potentially be admitted during the adjudicatory hearing. Counsel may be able to reduce this risk by moving for an *in camera* review of the evaluation and for an order limiting the use of the evaluation. *See infra* § 7.9E, Limiting Scope and Use of Examination.
- An evaluation on capacity to proceed before the juvenile makes a motion for funds for an expert (*see infra* § 7.8A, Procedures to Obtain Expert Evaluation) may hurt the juvenile's chance for success on a motion for an expert.
- If found incapable of proceeding and involuntarily committed, the juvenile will be confined for some period, even though there might have been no confinement if adjudicated delinquent, or the confinement might be for a longer period than under a dispositional order, particularly if the underlying offense is a misdemeanor or the juvenile does not have a significant history of delinquency.

- The juvenile may be confined while proceedings to determine capacity are pending. *See* G.S. 15A-1002(b)(2) (court may place defendant in state hospital for up to 60 days for capacity evaluation, although the stay is ordinarily shorter); G.S. 15A-1002(c) (court may order defendant confined after evaluation and pending hearing). It is not uncommon for a juvenile to be placed in a detention facility pending an evaluation. Counsel should request a hearing to review secure custody and argue for release if the juvenile does not meet the statutory criteria. *See infra* § 8.6C, Criteria for Secure Custody Pending Adjudication.
- A finding of incapacity to proceed and subsequent involuntary commitment may stigmatize the juvenile.