

7.9 Examination by Local Examiner or State Facility

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7.9 Examination by Local Examiner or State Facility

Counsel may begin the evaluation of capacity to proceed by obtaining an examination of the juvenile at a state or local mental health facility (rather than moving for funds for an expert, discussed *supra* in § 7.8, Obtaining an Expert Evaluation).

A. Moving for Examination

Time limit. There is no formal time limit on a motion questioning the juvenile’s capacity and requesting an examination. Lack of capacity may be raised at any time. *See* G.S. 15A-1002(a). A court may be less receptive, however, to a last-minute motion. *See, e.g., State v. Washington*, 283 N.C. 175, 185 (1973) (characterizing as “belated” a motion for initial examination two weeks before trial).

Contents of motion. Counsel may obtain a state or local examination by filing a motion questioning the juvenile’s capacity to proceed and asking that the juvenile be evaluated. A sample motion and order is available on the [Juvenile Defender website](#). *See also* [Form AOC-CR-207B](#), “Motion and Order Appointing Local Certified Forensic Evaluator” (Dec. 2013); and [Form AOC-CR-208B](#), “Motion and Order Committing Defendant to Central Regional Hospital – Butner Campus for Examination on Capacity to Proceed” (Dec. 2013). Counsel should provide sufficient information to the court in support of the request for an examination, particularly if counsel anticipates resistance to the request. *See* G.S. 15A-1002(a) (requiring moving party to detail conduct in support of motion); *State v. Grooms*, 353 N.C. 50, 78 (2000) (where defendant demonstrates or matters indicate there is a significant possibility that defendant is incapable of proceeding, trial court must appoint expert to inquire into defendant’s mental health); *State v. Taylor*, 298 N.C. 405, 409–10 (1979) (motion must contain sufficient detail to cause “prudent judge” to call for psychiatric examination before determining capacity); *State v. Robinson*, 221 N.C. App. 509, 516 (2012) (trial court erred by denying motion for capacity examination where defense counsel provided an affidavit detailing his observation that the defendant’s mental condition had significantly declined during the week before trial).

If the showing contains confidential information, such as information obtained in the course of privileged attorney-client communications, counsel should ask the court to review that information in camera.

Subsequent examinations. The juvenile may be able to obtain additional examinations if the report from the first examination has become stale or the juvenile's condition has changed. *See supra* § 7.5D, Time of Determination.

Motion by prosecutor or court for examination. The prosecutor may request an evaluation of capacity to proceed. As with a motion by the juvenile for an examination, the prosecutor must detail the specific conduct warranting an examination. *See* G.S. 15A-1002(a). The prosecutor should give counsel for the juvenile notice of the motion. *See State v. Jackson*, 77 N.C. App. 491, 496–97 (1985) (disapproving of entry of order for examination without notice to defendant); *see also infra* § 7.12B, Fifth and Sixth Amendment Protections (discussing Sixth Amendment right to notice of examination).

Practice note: If the trial court grants a motion by the prosecutor for a capacity examination, defense counsel should consider requesting that the court limit the scope of the examination. *See infra* § 7.9E, Limiting Scope and Use of Examination.

The trial court has the power on its own motion to order an evaluation of the juvenile's capacity to proceed. *State v. Grooms*, 353 N.C. 50, 78 (2000). Further, the court is obligated to inquire into capacity, even in the absence of a request by defense counsel, if there is a bona fide doubt about the juvenile's capacity to proceed. *State v. Staten*, 172 N.C. App. 673, 678 (2005).

B. Who Does Examination

Misdemeanors. On a motion for a capacity examination when the underlying offense alleged is a misdemeanor, the juvenile is evaluated by a local forensic examiner. G.S. 15A-1002(b)(1a). An earlier version of G.S. 15A-1002 permitted the court to refer a juvenile charged with a misdemeanor to a State facility for evaluation after the local examination was completed. However, the General Assembly amended G.S. 15A-1002, effective for offenses committed on or after December 1, 2013, to remove the court's authority to order examinations at State facilities in misdemeanor cases. 2013 N.C. Sess. Laws Ch. 18 (S 45). Local examinations tend to be brief.

Felonies. If the underlying offense alleged is a felony, the court may order a local evaluation or may order the juvenile to a State psychiatric facility. G.S. 15A-1002(b)(1a), (2). To order the juvenile to a State facility without ordering a local evaluation first, the court must find that a state facility examination is more appropriate. G.S. 15A-1002(b)(2). Examinations at state facilities may take longer than local examinations.

There are three state psychiatric hospitals in North Carolina: Central Regional Hospital in Butner, Cherry Hospital in Goldsboro, and Broughton Hospital in Morganton. Of those three facilities, only Central Regional Hospital provides capacity evaluations for juveniles. Juveniles referred to Central Regional Hospital are placed in a separate unit, which complies with the provision in G.S. 7B-2401 prohibiting courts from referring juveniles to facilities where they will come into contact with adults.

C. Providing Information to Examiner

Counsel should ensure that the examiner has access to relevant information concerning the juvenile's mental health. Counsel may relate his or her observations of the juvenile, identify people knowledgeable of the juvenile's condition, transmit copies of relevant records, and provide other relevant information. The National Juvenile Defender Center also recommends that counsel submit a written request to the examiner outlining the specific areas to be addressed in the evaluation. *See* National Juvenile Defender Center, [Juvenile Defender Delinquency Notebook](#) at 51–55 (2d ed. Spring 2006).

D. Confidentiality

Subject to certain exceptions, an examination at a state or local mental health facility is confidential. *See* G.S. 122C-52 (Right to confidentiality). According to G.S. 122C-53, disclosure is allowed to a “client,” which is defined by statute as “an individual who is admitted to and receiving service from, or who in the past had been admitted to and received services from, a facility.” G.S. 122C-3(6). Disclosure is also allowed pursuant to a written consent to release of information to a specific person, in certain court proceedings, and for treatment and research. G.S. 122C-54 through 122C-56. For juvenile court purposes, the most significant of these exceptions are as follows:

- The facility may provide a report of the examination to the court and prosecutor in the circumstances described in subsection F., below. *See* G.S. 122C-54(b).
- The results of the examination, including statements by the juvenile, could be admissible at subsequent court proceedings. *See infra* § 7.11, Hearing on Capacity to Proceed, § 7.12, Admissibility at Adjudication of Results of Capacity Evaluation; *see also* G.S. 122C-54(a1) (use in involuntary commitment proceedings).
- The facility may disclose otherwise confidential information if a court of competent jurisdiction orders disclosure. *See* G.S. 122C-54(a).

E. Limiting Scope and Use of Examination

A central part of any court-ordered examination is the interview of the juvenile. The interview will likely cover the alleged offense, as the juvenile's understanding of the allegations may bear on capacity to proceed. For recommendations on statutory changes creating greater protections for juveniles, see Lourdes M. Rosado and Riya S. Shah, [Protecting Youth from Self-Incrimination when Undergoing Screening, Assessment and Treatment within the Juvenile Justice System](#) (2007). Discussed below are options for limiting the scope of an examination. For a discussion of the admissibility of the examination results, *see infra* § 7.12, Admissibility at Adjudication of Results of Capacity Evaluation.

Refusal to discuss offense. North Carolina courts have not addressed the question of whether the juvenile may refuse to discuss the alleged offense when the examination concerns only capacity to proceed. The juvenile's refusal may result in an incomplete report, however, and may make it difficult to show incapacity.

Presence of counsel. There is no constitutional right to the presence of counsel during an examination concerning capacity to proceed. *State v. Davis*, 349 N.C. 1, 20 (1998). There is no prohibition on counsel attending the examination, however. Thus, counsel may request that the examiner allow counsel to be present during the interview portion of the evaluation. If the examiner refuses, counsel may ask the court to exercise its discretion to order that counsel be permitted to attend the interview portion of the examination. *But see Estelle v. Smith*, 451 U.S. 454, 470 n.14 (1981) (noting that presence of counsel during psychiatric interview may be disruptive in some instances).

Court order. Counsel for the juvenile may request a court order limiting the scope and use of the evaluation. Such an order might provide that the examiner is to report to the court on the issue of capacity to proceed only and is not to inquire into any area not necessary to that determination; that the results are to be used for the determination of capacity only and for no other purpose; and that information obtained during the evaluation regarding the alleged offense may not be divulged to the prosecution. Additionally, counsel should request that the evaluation be submitted and remain under seal in the juvenile court file, to be disclosed only pursuant to further order of the court. *See infra* § 7.9F, Report of Examination.

F. Report of Examination

Time of report. Examination reports must be completed within the following time limits, which are described in G.S. 15A-1002(b2). The statute does not set time limits on the holding of the examination, however, except in the last circumstance.

- If the juvenile was charged with a misdemeanor and was in custody at the time of the examination, the report must be completed no later than 10 days after the examination.
- If the juvenile was charged with a misdemeanor and was not in custody at the time of the examination, the report must be completed no later than 20 days after the examination.
- If the juvenile was charged with a felony, the report must be completed no later than 30 days after the examination.
- If the juvenile challenges the determination of the local screener or state facility and the court orders an independent psychiatric examination, that examination and report to the court must be completed no later than 60 days after entry of the order.

The statute allows the court to grant extensions for the preparation of the report of up to 120 days beyond the limits described in G.S. 15A-1002(b2). The statute does not specify a remedy for the failure to complete a report within the statutory time limits.

Limiting disclosure of the report. A copy of the examination report is to be provided to the clerk of court in a sealed envelope addressed to the attention of the presiding judge with a covering statement to the clerk of the fact of the examination and any conclusion as to whether the juvenile has or lacks capacity to proceed. G.S. 15A-1002(d). Additionally, a copy of the report must be provided to defense counsel or to the defendant

if not represented by counsel. *Id.* G.S. 15A-1002(d) then states that “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.” This statutory scheme appears to contemplate that the court and the defense are to get a copy of the report automatically after a capacity examination, but that the prosecutor is to get a copy of the report only if capacity is questioned after the examination and further court proceedings are necessary.

The above-quoted provision of G.S. 15A-1002(d) was added by the General Assembly to limit the prosecution’s access to capacity evaluations. Previously, the statute provided for reports to be sent automatically to the defense and the prosecution. 1979 N.C. Sess. Laws Ch. 1313 (S 941). In 1985, the General Assembly added the current language of the statute as 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.” 1985 N.C. Sess. Laws Ch. 588 (S 696). Therefore, the statute appears to allow a prosecutor to receive a copy of the evaluation only if capacity continues to be an issue and a hearing is necessary.

In 2003, the General Assembly amended G.S. 122C-54(b) to require facilities to disclose a capacity examination as provided in G.S. 15A-1002(d). 2003 N.C. Sess. Laws Ch. 313 (H 826). This change was part of a larger act dealing with mental health system reform. *Id.* Previously, G.S. 122C-54(b) stated that a facility “may” send the capacity report to the specified persons as provided in G.S. 15A-1002(d). Now, G.S. 122C-54(b) provides that the facility “shall” send the report as provided in G.S. 15A-1002(d). Thus, the disclosure provisions in G.S. 122C-54(b) continue to be linked to the requirements of G.S. 15A-1002(d), authorizing the facility to disclose a capacity examination report only to the extent provided in G.S. 15A-1002(d). As discussed above, G.S. 15A-1002(d) appears to authorize disclosure to the prosecutor only if the defendant’s capacity is questioned after the examination and further court proceedings are necessary.

Practice note: State psychiatric facilities have interpreted the 2003 change to G.S. 122C-54(b) as authorizing automatic disclosure of capacity evaluations to the prosecutor. Some local examiners may follow the same practice. Therefore, when requesting a capacity evaluation, defense counsel should ask the court to enter an order prohibiting the facility and evaluators from disclosing the evaluation to the prosecutor except on further order of the court. Counsel should also ensure that the order is transmitted to the facility and the examiner.
