

8.1 Overview

A defendant in a criminal trial must have the capacity to proceed, that is, to be able to understand the nature of the proceedings and be able to participate in the defense of the case. If the defendant meets the standard for “incapacity to proceed” under Chapter 15A of the North Carolina General Statutes (hereinafter G.S.), the criminal procedure statutes, the trial cannot go forward. The criminal court judge must then determine if the defendant meets the criteria for involuntary commitment under Chapter 122C, the mental health statutes. If so, the defendant is referred by the criminal court for involuntary commitment under the provisions of Chapter 122C. The defendant is sometimes called a “House Bill 95,” a reference to the legislative bill number for the original applicable statutes.

The primary provisions of Chapter 15A governing determination of incapacity to proceed and referral for civil commitment proceedings also apply to juveniles alleged to be delinquent under Chapter 7B. A reference to a defendant in this chapter generally applies as well to a juvenile alleged to be delinquent.

This chapter will discuss briefly the criminal court procedures that result in the defendant becoming a respondent in an involuntary commitment proceeding. The focus will be on the Chapter 122C procedures for the involuntary commitment of defendants found incapable of proceeding and the interplay between the relevant provisions of Chapter 122C and Chapter 15A.