

8.3 Terminology Used in this Chapter

“Defendant” means, for the purpose of this chapter, an individual charged with a crime in a criminal court proceeding.

“Delinquent juvenile” is “[a]ny juvenile who, while less than 16 years of age but at least 6 years of age, commits a crime or infraction under State law or under an ordinance of local government, including violation of the motor vehicle laws.” G.S. 7B-1501(7).

“Incapacity to Proceed” describes the condition of a defendant who “by reason of mental illness or defect . . . is unable to understand the nature and object of the proceedings against him, to comprehend his own situation in reference to the proceedings, or to assist in his defense in a rational or reasonable manner.” G.S. 15A-1001(a). The term “incapable of proceeding” is used interchangeably. The term “incompetent” (see definition below) has a separate and distinct legal definition under current North Carolina law and is not interchangeable with “capacity,” but is sometimes used as such. Older North Carolina cases, as well as opinions from federal courts and courts of other states, may also use the terms interchangeably.

“Incapacity to Proceed” distinguished from “Insanity Defense.” Incapacity to proceed is determined after a defendant has been charged with a crime and prior to or during the trial on those charges. The incapacity refers to the defendant’s ability to understand and participate in the criminal trial. An insanity defense relates to the defendant’s state of mind at the time the alleged crime was committed. A defendant who is “insane” at the time of trial might be found incapable of proceeding. An insanity defense to the crime charged cannot be raised unless the defendant is capable of proceeding to trial and entering a plea.

“Incompetent” means an individual who has been adjudicated incompetent to make or communicate important decisions concerning one’s person, family, or property pursuant to the procedures of Chapter 35A, “Incompetency and Guardianship,” of the North Carolina General Statutes and for whom a guardian has been appointed pursuant to that chapter. *See* G.S. 35A-1101(7), (8). For a discussion of proceedings to appoint a guardian, see JOHN L. SAXON, NORTH CAROLINA GUARDIANSHIP MANUAL (UNC School of Government 2008), *available at* www.ncids.org (under reference manuals).

“Respondent” means, for the purpose of this chapter, a defendant in a criminal proceeding who has been referred by the criminal court for involuntary commitment upon a finding of reasonable grounds to believe the individual is mentally ill and dangerous to self or others.