

8.5 Determination of Incapacity to Proceed

A. Standard for Determination

To be found incapable of proceeding, the defendant must be unable, by reason of mental illness or defect, to do one of the following:

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

G.S. 15A-1001(a).

Case law: Determination of capacity to proceed.

State v. Shytle, 323 N.C. 684 (1989) (stating and applying test); *State v. Jenkins*, 300 N.C. 578 (1980) (stating and applying test).

B. Criminal Court Procedure

Defender Manual. For a more extensive discussion of criminal court procedures, see Chapter 2, “Capacity to Proceed,” of the North Carolina Defender Manual (Volume 1, Pretrial), available at www.ncids.org (under reference manuals).

Flowchart of criminal and civil commitment proceedings. Appendix 8-1 to this chapter, “Capacity and Commitment Flowchart,” traces the interplay between criminal and civil commitment proceedings, highlighting the major steps in the process.

Motion. The question of the defendant’s capacity may be raised at any time during the criminal court proceedings. A motion may be made by the prosecutor, the defendant, defense counsel, or the court. The motion must set forth the reasons the movant questions the defendant’s capacity to proceed. G.S. 15A-1002(a).

Capacity examination. When a motion is made questioning a defendant’s capacity, the court may order a local examination by “impartial medical experts, including forensic evaluators,” to determine the defendant’s current mental condition. The resulting report is admissible at the hearing on capacity. In addition, the examiner may be called to testify by the court at the request of either party. G.S. 15A-1002(b)(1). It is not required by statute that an examination be ordered, but the court typically orders one when the issue of capacity has been raised.

Examination at state facility: misdemeanors. Only after an initial examination by a medical expert may a defendant charged with a misdemeanor be ordered by the court to a state facility for the mentally ill for further evaluation. This might be done because the results of the first examination were not definitive or because the court wants an in-depth evaluation before proceeding. The defendant may be admitted to the state facility for no

more than sixty days for observation and treatment necessary to determine capacity to proceed. G.S. 15A-1002(b)(2). As a practical matter, once undertaken, the typical state facility evaluation is far shorter than the sixty-day maximum.

Examination at state facility: felonies. The court may bypass the initial, local examination for a defendant charged with a felony upon finding that an evaluation at a state facility for the mentally ill would be more appropriate. This evaluation may also be ordered following an initial evaluation. In either instance, the evaluation at the state facility may be no more than sixty days for observation and treatment necessary to determine capacity to proceed. G.S. 15A-1002(b)(2). As a practical matter, once undertaken, the typical state facility evaluation is far shorter than the sixty-day maximum.

Report to court. A report of the results of any court-ordered evaluation must be sent to the defense attorney and to the clerk of superior court for delivery to the court. The report is admissible at the hearing on capacity. G.S. 15A-1002(b)(2). It remains a confidential record, however, until introduced into evidence. If the defendant's capacity is questioned following the examination, the full report must be forwarded to the district attorney. G.S. 15A-1002(d). Notwithstanding this limitation, State facilities have been releasing the capacity report to the district attorney when they release the report to the court and the criminal defense attorney, unless the defense attorney has obtained a court order restricting disclosure.

Hearing. If the defendant's capacity to proceed has been questioned, the criminal court must hold a hearing on the issue of the defendant's capacity to proceed. The hearing must occur after any court-ordered examinations.

The statute does not set forth detailed procedures for the hearing. Both the State and the defendant may present evidence and, if an examination was ordered, the examiner may be called to testify. The reports of any examinations are admissible in evidence. G.S. 15A-1002(b).

After hearing the evidence, the court must determine whether the defendant is capable of proceeding upon the criminal charges. If the defendant has the necessary capacity, the trial may proceed on the charges.

Disposition upon finding of incapacity to proceed. If the court finds that the defendant lacks the capacity to proceed, the criminal statute provides several alternative dispositions:

1. The court may enter "appropriate orders to safeguard the defendant and to ensure his return for trial in the event that he subsequently becomes capable of proceeding." Appropriate orders include any of the procedures allowed under Article 26 of the Criminal Procedure Act (Chapter 15A of the North Carolina General Statutes), entitled "Bail." G.S. 15A-1004(a), (b).
2. The court may dismiss the charges:
 - i. when it appears that the defendant will not gain the capacity to proceed;

- ii. when the defendant has been confined for a period equal to or in excess of the maximum sentence for the crime charged; or
 - iii. five years from the date of the finding of incapacity to proceed for misdemeanor cases or ten years for felony cases. G.S. 15A-1008.
3. The prosecutor may dismiss the charges with leave. G.S. 15A-1009(a).
 4. The court may refer the defendant for civil commitment proceedings.

Constitutional principles also may require release of the respondent. *See Jackson v. Indiana*, 406 U.S. 715 (1972), discussed below.

Case law: The indefinite confinement of a defendant found incapable of proceeding, without a civil commitment proceeding required to commit any other person, is unconstitutional.

Jackson v. Indiana, 406 U.S. 715 (1972). The U.S. Supreme Court considered the case of a criminal defendant found unable to proceed to trial and committed to an institution under Indiana law until determined to be “sane.” The defendant was deaf and mute with the mental functioning of a preschool child and with limited sign language skills. He was charged with two robberies of money and goods with a total worth of \$9.00. *Id.* at 717.

Two psychiatrists were appointed by the court to evaluate the defendant’s capacity to proceed to trial, followed by a “competency hearing.” The examiners reported that the defendant had almost nonexistent communication skills and lacked the intelligence to develop those skills. Both agreed that the condition of the defendant was unlikely to improve, and a deaf-school interpreter through whom the doctors had tried to communicate with the defendant testified that there were no facilities in the state available to provide treatment designed to improve his condition. *Id.* at 718–19. The trial court found that the defendant “lack(ed) comprehension sufficient to make his defense” and committed him to the Indiana Department of Mental Health until such time as the Department certified to the court that the defendant was “sane.” *Id.* at 719.

Due Process. The U.S. Supreme Court reviewed the provisions of Indiana law governing involuntary civil commitment for those termed “feeble-minded” and those found to be “mentally ill.” The Court noted that in both instances the commitment statutes required an application for commitment with accompanying physician’s certificate, examination by two court-appointed physicians, appointment of counsel, notice, and a hearing. Persons committed as feeble-minded may be released at any time the superintendent of the institution determines it is justified by the mental and physical condition of the person. Persons committed as mentally ill had a right to appeal the court’s decision and could also be discharged in the discretion of the superintendent of the institution. *Id.* at 721–23. The state did not afford all of these procedures to the defendant. Further, the Court noted that the defendant’s commitment rested on proceedings that did not bring into play or even consider any of the articulated bases for indefinite commitment. “At the least, due process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed.” *Id.* at 737–38.

Equal Protection. The Court noted that it had previously held in *Baxstrom v. Herold*, 383 U.S. 107 (1966), that persons involuntarily committed upon completion of a prison sentence are entitled to the same protection of the law afforded to others civilly committed. The Court extended the *Baxstrom* ruling to the situation here, stating that the standard for commitment of one charged with a crime should not be more lenient, nor the criteria for release more stringent, than what is generally applicable to one who does not have criminal charges pending. 406 U.S. at 730.

Holding. The court held that the Indiana statute allowing the defendant to be committed indefinitely after being found incompetent to stand trial without the procedural protections afforded those committed under the general statutory provisions for civil commitment violated the defendant's right to equal protection under the law and was a violation of due process. *Id.* at 730, 738. The court also stated:

“We hold, consequently, that a person charged by a State with a criminal offense who is committed solely on account of his incapacity to proceed to trial cannot be held more than the reasonable period of time necessary to determine whether there is a substantial probability that he will attain that capacity in the foreseeable future. If it is determined that this is not the case, then the State must either institute the customary civil commitment proceeding that would be required to commit indefinitely any other citizen, or release the defendant.”

Id. at 738.