Chapter 2
Capacity to Proceed

Sections 15A-1001 through 15A-1009 of the North Carolina General Statutes (hereinafter G.S.) contain the basic standards and procedures for challenging the competency, or capacity to proceed, of a defendant. These provisions deal with the three main phases of a capacity challenge: a psychiatric examination; a hearing to determine capacity; and proceedings after a determination of incapacity (that is, involuntary commitment and disposition of the criminal case). This chapter reviews all three phases. For a discussion of civil commitment procedures generally, see NORTH CAROLINA CIVIL COMMITMENT MANUAL (UNC School of Government, 2d ed. 2011), *available at* www.ncids.org (select "Training & Resources," then "Reference Manuals").

This chapter addresses cases in which the defendant is being tried as an adult. For a discussion specific to cases in juvenile court, see NORTH CAROLINA JUVENILE DEFENDER MANUAL Ch. 7 (Capacity to Proceed) (UNC School of Government, 2008), *available at* www.ncids.org (select "Training & Resources," then "Reference Manuals").

To access Administrative Office of the Courts (AOC) forms referenced in this chapter, visit the Judicial Forms Search page at www.nccourts.org/forms/formsearch.asp. Two forms frequently cited in the chapter are: AOC-CR-207, "Motion and Order Appointing Local Certified Forensic Evaluator" (Jan. 2011); and AOC-CR-208, "Motion and Order Committing Defendant to Central

Regional Hospital – Butner Campus for Examination on Capacity to Proceed" (Jan. 2011). To access North Carolina State Bar ethics opinions and rules of professional conduct, visit www.ncbar.com/menu/ethics.asp.

Legislative note: This chapter reviews the procedures in effect at the time of release of this manual in Fall 2013. During the 2013 legislative session the General Assembly made several changes to the statutes governing capacity determinations and the ensuing proceedings for involuntary commitment of a person found incapable to proceed. *See* S.L. 2013-18 (S 45). These changes apply to offenses committed on or after December 1, 2013. The discussion in this chapter includes "Legislative notes" describing the changes where applicable. For a further discussion of these changes, see *infra* Appendix 2-1, Summary of 2013 Legislation.