GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

SESSION LAW 2013-18
SENATE BILL 45

AN ACT TO AMEND THE LAWS GOVERNING INCAPACITY TO PROCEED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1002 reads as rewritten:

"**§ 15A-1002. Determination of incapacity to proceed; evidence; temporary commitment; temporary orders.**

(a) The question of the capacity of the defendant to proceed may be raised at any time on motion by the prosecutor, the defendant, the defense counsel, or the court. The motion shall detail the specific conduct that leads the moving party to question the defendant's capacity to proceed.

(b) When the capacity of the defendant to proceed is questioned, the court shall hold a hearing to determine the defendant's capacity to proceed. If an examination is ordered pursuant to subdivision (1) or (2) of this subsection, the hearing shall be held after the examination. Reasonable notice shall be given to the defendant and prosecutor, and the State and the defendant may introduce evidence. ~~The court:~~

(1) ~~May~~In the case of a defendant charged with a misdemeanor or felony, the court may appoint one or more impartial medical experts, including forensic evaluators approved under rules of the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services, to examine the defendant and return a written report describing the present state of the defendant's mental ~~health; reports~~health. Reports so prepared are admissible at the ~~hearing and the~~hearing. The court may call any expert so appointed to testify at the ~~hearing; any expert so appointed may be called to testify at the hearing by the court at~~hearing with or without the request of either ~~party; or~~party.

(2) ~~In the case of a defendant charged with a misdemeanor only after the examination pursuant to subsection (b)(1) of this section or at~~At any time in the case of a defendant charged with a felony, the court may order the defendant to a State facility for the mentally ill for observation and treatment for the period, not to exceed 60 days, necessary to determine the defendant's capacity to ~~proceed; in the case of a defendant charged with a felony, if~~proceed. If a defendant is ordered to a State facility without first having an examination pursuant to subsection (b)(1) of this section, the judge shall make a finding that an examination pursuant to this subsection would be more appropriate to determine the defendant's ~~capacity; the~~capacity. The sheriff shall return the defendant to the county when notified that the evaluation has been ~~completed; the~~completed. The director of the facility shall direct his report on defendant's condition to the defense attorney and to the clerk of superior court, who shall bring it to the attention of the ~~court; the~~court. The report is admissible at the hearing.

(3) Repealed by Session Laws 1989, c. 486, s. 1.

(4) A presiding district or superior court judge of this State who orders an examination pursuant to subdivision (1) or (2) of this subsection shall order the release of relevant confidential information to the examiner, including, but not limited to, the warrant or indictment, arrest records, the law enforcement incident report, the defendant's criminal record, jail records, any prior medical and mental health records of the defendant, and any school

records of the defendant after providing the defendant with reasonable notice and an opportunity to be heard and then determining that the information is relevant and necessary to the hearing of the matter before the court and unavailable from any other source. This subdivision shall not be construed to relieve any court of its duty to conduct hearings and make findings required under relevant federal law before ordering the release of any private medical or mental health information or records related to substance abuse or HIV status or treatment. The records may be surrendered to the court for in camera review if surrender is necessary to make the required determinations. The records shall be withheld from public inspection and, except as provided in this subdivision, may be examined only by order of the court.

(b1) ~~If the report pursuant to subdivision (1) or (2) of subsection (b) of this section indicates~~ The order of the court shall contain findings of fact to support its determination of the defendant's capacity to proceed. The parties may stipulate that the defendant is capable of proceeding but shall not be allowed to stipulate that the defendant lacks capacity to proceed. If the court concludes that the defendant lacks capacity to proceed, proceedings for involuntary civil commitment under Chapter 122C of the General Statutes may be instituted on the basis of the report in either the county where the criminal proceedings are pending or, if the defendant is hospitalized, in the county in which the defendant is hospitalized.

(b2) Reports made to the court pursuant to this section shall be completed and provided to the court as follows:

(1) The report in a case of a defendant charged with a misdemeanor shall be completed and provided to the court no later than 10 days following the completion of the examination for a defendant who was in custody at the time the examination order was entered and no later than 20 days following the completion of the examination for a defendant who was not in custody at the time the examination order was entered.

(2) The report in the case of a defendant charged with a felony shall be completed and provided to the court no later than 30 days following the completion of the examination.

(3) In cases where the defendant challenges the determination made by the court-ordered examiner or the State facility and the court orders an independent psychiatric examination, that examination and report to the court must be completed within 60 days of the entry of the order by the court.

The court may, for good cause shown, extend the time for the provision of the report to the court for up to 30 additional days. The court may renew an extension of time for an additional 30 days upon request of the State or the defendant prior to the expiration of the previous extension. In no case shall the court grant extensions totaling more than 120 days beyond the time periods otherwise provided in this subsection.

(c) The court may make appropriate temporary orders for the confinement or security of the defendant pending the hearing or ruling of the court on the question of the capacity of the defendant to proceed.

(d) Any report made to the court pursuant to this section shall be forwarded to the clerk of superior court in a sealed envelope addressed to the attention of a presiding judge, with a covering statement to the clerk of the fact of the examination of the defendant and any conclusion as to whether the defendant has or lacks capacity to proceed. If the defendant is being held in the custody of the sheriff, the clerk shall send a copy of the covering statement to the sheriff. The sheriff and any persons employed by the sheriff shall maintain the copy of the covering statement as a confidential record. A copy of the full report shall be forwarded to defense counsel, or to the defendant if he is not represented by ~~counsel provided, if~~counsel. 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.~~attorney, as provided in G.S. 122C-54(b). Until such report becomes a public record, the full report to the court shall be kept under such conditions as are directed by the court, and its contents shall not be revealed except as directed by the court. Any report made to the court pursuant to this section shall not be a public record unless introduced into evidence."

SECTION 2. G.S. 15A-1004(c) reads as rewritten:

"(c) If the defendant is placed in the custody of a hospital or other institution in a proceeding for involuntary civil commitment, the orders must provide for reporting to the clerk if the defendant is to be released from the custody of the hospital or institution. The original or supplemental orders may make provisions as in subsection (b) in the event that the defendant is released. The court shall also order that the defendant shall be examined to determine whether the defendant has the capacity to proceed prior to release from custody. A report of the examination shall be provided pursuant to G.S. 15A-1002. If the defendant was charged with a violent crime, including a crime involving assault with a deadly weapon, and that charge has not been dismissed, the order must require that if the defendant is to be released from the custody of the hospital or other institution, he is to be released only to the custody of a specified law enforcement agency. If the original or supplemental orders do not specify to whom the respondent shall be released, the hospital or other institution may release the defendant to whomever it thinks appropriate."

SECTION 3. G.S. 15A-1006 reads as rewritten:

"**§ 15A-1006. Return of defendant for trial upon gaining capacity.**

If a defendant who has been determined to be incapable of proceeding, and who is in the custody of an institution or an individual, ~~gains~~ has been determined by the institution or individual having custody to have gained capacity to proceed, the individual or institution ~~must notify~~shall provide written notification to the clerk in the county in which the criminal proceeding is pending. The clerk ~~must notify the sheriff to~~ shall provide written notification to the district attorney, the defendant's attorney, and the sheriff. The sheriff shall return the defendant to the county for a supplemental hearing pursuant to G.S. 15A-1007, if conducted, and ~~trial,~~trial and ~~to~~ hold ~~him~~ the defendant for a supplemental hearing and trial, subject to the orders of the court entered pursuant to G.S. 15A-1004."

SECTION 4. G.S. 15A-1007 reads as rewritten:

"**§ 15A-1007. Supplemental hearings.**

(a) When it has been reported to the court that a defendant has gained capacity to proceed, or when the defendant has been determined by the individual or institution having custody of him to have gained capacity and has been returned for ~~trial, the~~trial, in accordance with G.S. 15A-1004(e) and G.S. 15A-1006, the clerk shall notify the district attorney. Upon receiving the notification, the district attorney shall calendar the matter for hearing at the next available term of court but no later than 30 days after receiving the notification. The court may hold a supplemental hearing to determine whether the defendant has capacity to proceed. The court may take any action at the supplemental hearing that it could have taken at an original hearing to determine the capacity of the defendant to proceed.

(b) The court may hold a supplemental hearing any time upon its own determination that a hearing is appropriate or necessary to inquire into the condition of the defendant.

(c) The court must hold a supplemental hearing if it appears that any of the conditions for dismissal of the charges have been met.

(d) If the court determines in a supplemental hearing that a defendant has gained the capacity to proceed, the case shall be calendared for trial at the earliest practicable time. Continuances that extend beyond 60 days after initial calendaring of the trial shall be granted only in extraordinary circumstances when necessary for the proper administration of justice, and the court shall issue a written order stating the grounds for granting the continuance."

SECTION 5. G.S. 15A-1008 reads as rewritten:

"**§ 15A-1008. Dismissal of charges.**

(a) When a defendant lacks capacity to proceed, the court ~~may~~ shall dismiss the ~~charges:~~charges upon the earliest of the following occurrences:

(1) When it appears to the satisfaction of the court that the defendant will not gain capacity to ~~proceed; or~~proceed.

(2) When as a result of incarceration, involuntary commitment to an inpatient facility, or other court-ordered confinement, the defendant has been substantially deprived of his liberty for a period of time equal to or in excess of the ~~maximum permissible period of confinement for the crime or crimes charged; or~~maximum term of imprisonment permissible for prior record Level VI for felonies or prior conviction Level III for misdemeanors for the most serious offense charged.

(3) Upon the expiration of a period of five years from the date of determination of incapacity to proceed in the case of misdemeanor charges and a period of 10 years in the case of felony charges.

(b) A dismissal entered pursuant to subdivision (2) of subsection (a) of this section shall be without leave.

(c) A dismissal entered pursuant to subdivision (1) or (3) of subsection (a) of this section shall be issued without prejudice to the refiling of the charges. Upon the defendant becoming capable of proceeding, the prosecutor may reinstitute proceedings dismissed pursuant to subdivision (1) or (3) of subsection (a) of this section by filing written notice with the clerk, with the defendant, and with the defendant's attorney of record.

(d) Dismissal of criminal charges pursuant to this section shall be upon motion of the prosecutor or the defendant or upon the court's own motion."

SECTION 6. G.S. 15A-1009 is repealed.

SECTION 7. G.S. 122C-54(b) reads as rewritten:

"(b) If an individual is a defendant in a criminal case and a mental examination of the defendant has been ordered by the court as provided in G.S. 15A-1002, the facility shall send the results or the report of the mental examination to the clerk of court, to the district attorney or prosecuting officer, and to the attorney of record for the defendant as provided in G.S. 15A-1002(d). The report shall contain a treatment recommendation, if any, and an opinion as to whether there is a likelihood that the defendant will gain the capacity to proceed."

SECTION 8. Part 7 of Article 5 of Chapter 122C of the General Statutes is amended by adding a new section to read:

"**§ 122C-278. Reexamination for capacity to proceed prior to discharge.**

Whenever a respondent has been committed to either inpatient or outpatient treatment pursuant to this Chapter after having been found incapable of proceeding and referred by the court for civil commitment proceedings, the respondent shall not be discharged from the custody of the hospital or institution or the outpatient commitment case terminated until the respondent has been examined for capacity to proceed and a report filed with the clerk of court pursuant to G.S. 15A-1002."

SECTION 9. The Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services shall develop and adopt rules by December 1, 2013, to require forensic evaluators appointed pursuant to G.S. 15A-1002(b) to meet the following requirements:

(1) Complete all training requirements necessary to be credentialed as a certified forensic evaluator.

(2) Attend annual continuing education seminars that provide continuing education and training in conducting forensic evaluations and screening examinations of defendants to determine capacity to proceed and in preparing written reports required by law.

SECTION 10. The Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services shall by December 1, 2013, adopt guidelines for treatment of individuals who are involuntarily committed following a determination of incapacity to proceed and a referral pursuant to G.S. 15A-1003. The guidelines shall require a treatment plan that uses best practices in an effort to restore the individual's capacity to proceed in the criminal matter.

SECTION 11. Sections 1 through 8 of this act become effective December 1, 2013, and apply to offenses committed on or after that date. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 27th day of March, 2013.

s/ Daniel J. Forest
President of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

s/ Pat McCrory
Governor

Approved 4:42 p.m. this 3rd day of April, 2013