

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001

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HOUSE BILL 138

Short Title: Juvenile Capacity to Proceed.

(Public)

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Sponsors: Representatives Baddour; Alexander and Insko.

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Referred to: Judiciary II.

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February 15, 2001

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH PROCEDURES IN THE JUVENILE CODE FOR  
JUVENILES WHO LACK THE CAPACITY TO PROCEED.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 7B-2401 is repealed.

**SECTION 2.** Chapter 7B of the General Statutes is amended by adding a  
new Article to read:

"Article 23A.

"Incapacity to Proceed.

**"§ 7B-2310. No proceedings when juvenile lacks capacity to proceed; exceptions.**

(a) No juvenile may be transferred to superior court, adjudicated delinquent, or given a disposition for a delinquent act when the juvenile is unable to understand the nature and object of the proceedings, to comprehend the juvenile's own situation in reference to the proceedings, or to assist in the juvenile's defense in a rational or reasonable manner. This condition is hereinafter referred to as "incapacity to proceed." Age alone is not a sufficient basis for a finding of incapacity to proceed.

(b) The question of the capacity of the juvenile to proceed may be raised at any time by the court or on motion by the prosecutor or the juvenile. The motion shall set out the specific facts that lead the moving party to question the juvenile's capacity to proceed.

(c) Subsection (a) of this section does not prevent the court from going forward with any motions that can be handled by counsel without the assistance of the juvenile.

**"§ 7B-2311. Examination of juvenile; report.**

(a) At any time after the question of the capacity of the juvenile to proceed has been raised, if the court determines that reasonable grounds exist for an examination to determine the juvenile's capacity to proceed, the court may order the juvenile be examined as follows:

1           (1) The court may appoint one or more impartial medical experts,  
2 including forensic evaluators approved under rules of the Commission  
3 for Mental Health, Developmental Disabilities, and Substance Abuse  
4 Services, to examine the juvenile and return a written report describing  
5 findings and any professional opinion relevant to the juvenile's  
6 capacity to proceed.

7           (2) After either an examination pursuant to subdivision (1) of this  
8 subsection or a finding by the court that an examination of the juvenile  
9 in a State mental health facility is more appropriate, the court may  
10 order the juvenile to an appropriate State mental health facility for  
11 observation and treatment for the period, not to exceed 60 days,  
12 necessary to determine the juvenile's capacity to proceed. Unless the  
13 court orders otherwise, the sheriff shall transport the juvenile to the  
14 facility, and, when notified that the evaluation has been completed,  
15 transport the juvenile to the place specified by the court. The director  
16 of the facility shall return a written report describing findings and any  
17 professional opinion relevant to the juvenile's capacity to proceed.

18           (b) If the mental health expert determines that the juvenile does not have the  
19 capacity to proceed, the report shall describe the cause of the incapacity and include the  
20 expert's assessment of the following:

21               (1) The likelihood that the juvenile will gain the capacity to proceed.

22               (2) Whether the juvenile needs treatment and, if so, the most appropriate  
23 form and place of treatment in this State, based on the juvenile's needs  
24 and any potential threat to public safety.

25           (c) The written report shall be returned to the clerk of superior court in a sealed  
26 envelope addressed to the attention of a presiding judge, with a cover statement to the  
27 clerk of the fact of the examination of the juvenile and any conclusion as to whether the  
28 juvenile has or lacks the capacity to proceed. The clerk shall forward a copy of the full  
29 report to the juvenile's attorney and, if the question of the juvenile's capacity to proceed  
30 is raised at any time, the clerk shall forward a copy of the full report to the prosecutor.  
31 The clerk shall seal the report that is kept in the clerk's file, and its contents shall not be  
32 revealed except as directed by the court.

33 **"§ 7B-2312. Capacity hearing; orders.**

34           (a) When the capacity of the juvenile to proceed is questioned, the court shall  
35 hold a hearing to determine the juvenile's capacity to proceed. If an examination is  
36 ordered pursuant to G.S. 7B-2311, the hearing shall be held after the examination. The  
37 clerk shall give reasonable notice of the hearing to the prosecutor, the juvenile, and the  
38 juvenile's parent, guardian, or custodian. The burden of proving that the juvenile does  
39 not have the capacity to proceed shall be on the party alleging that the juvenile does not  
40 have the capacity to proceed. The standard of proof necessary for proving that the  
41 juvenile does not have the capacity to proceed is a preponderance of the evidence.

42           (b) Any report required pursuant to G.S. 7B-2311 is admissible at the hearing. At  
43 the request of either party, the court may call any expert appointed to testify at the

1 hearing. Any expert appointed by the court shall be considered the court's witness and  
2 shall be subject to cross-examination by both the juvenile's attorney and the prosecutor.

3 (c) If the court finds that the juvenile is capable of proceeding, the court shall  
4 make written findings of capacity to proceed.

5 (d) If the court finds by a preponderance of the evidence that the juvenile does  
6 not have the capacity to proceed, after an additional hearing the court determines to be  
7 necessary, the court shall make findings as to:

8 (1) The likelihood that the juvenile will gain the capacity to proceed.

9 (2) Whether the juvenile needs further evaluation or treatment.

10 (3) Whether there are reasonable grounds to believe the juvenile meets the  
11 criteria for involuntary commitment under Part 7 of Article 5 of  
12 Chapter 122C of the General Statutes.

13 The court shall either dismiss the petition, with or without prejudice, or continue the  
14 case for no more than six months, as the court finds to be in the best interest of the  
15 juvenile and the State.

16 (e) If the court continues the case, after determining that the juvenile lacks the  
17 capacity to proceed, the court may:

18 (1) Place the juvenile in the custody of a parent, guardian, custodian, or  
19 other suitable person or agency that agrees to supervise the juvenile.

20 (2) Set appropriate conditions necessary to protect the juvenile, to ensure  
21 the juvenile's return to court, and to protect the public.

22 (3) Conduct or schedule a hearing pursuant to G.S. 7B-2502 and enter  
23 appropriate orders under that section.

24 Until the case is dismissed or the juvenile has the capacity to proceed, the court shall  
25 review the case at intervals of no longer than six months.

26 (f) At any stage of the proceeding, the court may direct the chief court counselor  
27 to evaluate whether a report of possible neglect or dependency should be made to the  
28 director of the department of social services pursuant to G.S. 7B-301.

29 **"§ 7B-2313. Referral of incapable juvenile for civil commitment proceedings.**

30 (a) If the court finds reasonable grounds to believe that the juvenile meets the  
31 criteria for involuntary commitment under Part 7 of Article 5 of Chapter 122C of the  
32 General Statutes, the court shall make findings of fact and issue a custody order in the  
33 same manner, upon the same grounds and with the same effect as an order issued by a  
34 clerk or magistrate pursuant to G.S. 122C-261. Proceedings thereafter are in accordance  
35 with Part 7 of Article 5 of Chapter 122C of the General Statutes. If the juvenile is  
36 alleged to have committed a violent offense, including an offense involving assault with  
37 a deadly weapon, the court's custody order shall require a law enforcement officer to  
38 take the juvenile directly to a 24-hour facility as described in G.S. 122C-252; and the  
39 order shall indicate that the juvenile was alleged to be delinquent for committing an act  
40 that would be a violent crime if committed by an adult and that the juvenile was found  
41 incapable of proceeding.

42 (b) Evidence used at the hearing with regard to the juvenile's capacity to proceed  
43 is admissible in the involuntary civil commitment proceedings.

1       (c) When a juvenile is found incapable of proceeding and is in a hospital or other  
2 in-patient facility as a result of an involuntary commitment proceeding, the commitment  
3 order shall:

4           (1) Require the hospital or facility to notify the chief court counselor if the  
5 juvenile is to be released; and

6           (2) Specify the person or agency to which the juvenile may be released.

7       (d) A juvenile committed under this Article shall not be placed in a situation  
8 where the juvenile will come in contact with adults committed for any purpose.

9 **"§ 7B-2314. Dismissal of petition.**

10 When the court has determined that a juvenile lacks the capacity to proceed, upon  
11 motion of a party, the court shall dismiss the petition with prejudice:

12           (1) When the juvenile has been substantially deprived of the juvenile's  
13 liberty for a period of time equal to or in excess of the maximum  
14 permissible period of commitment pursuant to G.S. 7B-2513; or

15           (2) In the case of an alleged misdemeanor offense, the earliest of:

16           a. When it appears to the satisfaction of the court that the juvenile  
17 will not gain the capacity to proceed within five years of the  
18 date the petition was filed;

19           b. The expiration of a period of five years or more from the date  
20 the petition was filed; or

21           c. The juvenile's reaching the age of 18 years; or

22           (3) In the case of an alleged felony offense, the earliest of:

23           a. When it appears to the satisfaction of the court that the juvenile  
24 will not gain the capacity to proceed within 10 years of the date  
25 the petition was filed;

26           b. The expiration of a period of 10 years or more from the date the  
27 petition was filed; or

28           c. If the juvenile was 12 years of age or younger when the offense  
29 allegedly occurred, the juvenile's reaching the age of maximum  
30 commitment specified in G.S. 7B-2513 for the category of  
31 offense alleged.

32 **"§ 7B-2315. Dismissal with leave.**

33           (a) When a court has determined that a juvenile lacks the capacity to proceed and  
34 the petition has not been dismissed, a prosecutor may enter a dismissal with leave.  
35 Dismissal with leave under this section results in removal of the case from the docket of  
36 the court, but all processes outstanding retain their validity, and all necessary actions in  
37 the case may be taken.

38           (b) The prosecutor may enter the dismissal with leave orally in open court or by  
39 filing the dismissal in writing with the clerk. If the dismissal is entered orally, the clerk  
40 shall note the nature of the dismissal in the case records. The prosecutor shall give  
41 written notice of the dismissal to the juvenile's attorney, the chief court counselor, and  
42 the juvenile's parent, guardian, or custodian, unless the dismissal is entered orally and in  
43 the presence of those persons.

1       (c) Upon the juvenile's becoming capable of proceeding, or when the prosecutor  
2 believes the juvenile may soon become capable of proceeding, the prosecutor may  
3 reinstigate the proceedings by filing written notice with the clerk and give written notice  
4 to the juvenile, the juvenile's attorney of record, the chief court counselor, and the  
5 juvenile's parent, guardian, or custodian.

6       (d) A dismissal with leave entered under this section is no longer in effect if the  
7 court later dismisses the petition.

8       (e) Nothing in this section limits the court's duty or authority to dismiss the  
9 petition pursuant to G.S. 7B-2314 on motion of a party or on the court's own motion.

10 **"§ 7B-2316. Privilege against self-incrimination; records.**

11       (a) The privilege against self-incrimination applies to any examination that is  
12 ordered by the court pursuant to this Article.

13       (b) Any statement made by the juvenile during an examination or any evidence  
14 resulting from that statement concerning any other event or transaction is not admissible  
15 at any adjudication or criminal proceeding against the juvenile for other allegations of  
16 delinquency or criminal charges that are based on those events or transactions.

17       (c) No statement made by the juvenile or any part of an evaluation obtained  
18 pursuant to this Article shall be used for any purpose, other than a determination of  
19 capacity pursuant to this Article, without the written consent of the juvenile or the  
20 juvenile's parent or guardian or a court order.

21       (d) No statement made by the juvenile during an examination conducted pursuant  
22 to this Article or any evidence resulting from that statement is subject to disclosure  
23 pursuant to Subchapter III of this Chapter.

24 **"§ 7B-2317. Reporting with regard to juveniles incapable of proceeding.**

25       The chief court counselor for the district in which the delinquency proceeding is  
26 pending shall keep a list of juveniles who have been determined to be incapable of  
27 proceeding. At least semiannually, the chief court counselor shall submit this list to the  
28 prosecutor and to the chief district court judge."

29       **SECTION 3.** G.S. 7B-2502 reads as rewritten:

30 **"§ 7B-2502. Evaluation and treatment of undisciplined and delinquent juveniles.**  
31 **juveniles and juveniles found incapable of proceeding in delinquency**  
32 **cases.**

33       (a) ~~In any case,~~ In any case in which a juvenile has been adjudicated delinquent  
34 or undisciplined or in which a juvenile who is alleged to be delinquent has been found  
35 incapable of proceeding, the court may order that the juvenile be examined by a  
36 physician, psychiatrist, psychologist, or other qualified expert as may be needed for the  
37 court to determine the needs of the juvenile. In the case of a juvenile adjudicated  
38 delinquent for committing an offense that involves the possession, use, sale, or delivery  
39 of alcohol or a controlled substance, the court shall require the juvenile to be tested for  
40 the use of controlled substances or alcohol within 30 days of the adjudication. In the  
41 case of any juvenile adjudicated delinquent, the court may, if it deems it necessary,  
42 require the juvenile to be tested for the use of controlled substances or alcohol. The  
43 results of these initial tests conducted pursuant to this subsection shall be used for  
44 evaluation and treatment purposes only.

1 (b) Upon completion of the examination, the court shall conduct a hearing to  
2 determine whether the juvenile is in need of medical, surgical, psychiatric,  
3 psychological, or other evaluation or treatment and who should pay the cost of the  
4 evaluation or treatment. The county manager, or any other person who is designated by  
5 the chair of the board of county commissioners, of the county of the juvenile's residence  
6 shall be notified of the hearing, and allowed to be heard. If the court finds the juvenile  
7 to be in need of medical, surgical, psychiatric, psychological, or other evaluation or  
8 treatment, the court shall permit the parent, guardian, custodian, or other responsible  
9 persons to arrange for evaluation or treatment. If the parent, guardian, or custodian  
10 declines or is unable to make necessary arrangements, the court may order the needed  
11 evaluation or treatment, surgery, or care, and the court may order the parent to pay the  
12 cost of the care pursuant to Article 27 of this Chapter. If the court finds the parent is  
13 unable to pay the cost of evaluation or treatment, the court shall order the county to  
14 arrange for evaluation or treatment of the juvenile and to pay for the cost of the  
15 evaluation or treatment. The county department of social services shall recommend the  
16 facility that will provide the juvenile with evaluation or treatment.

17 (c) If the court believes, or if there is evidence presented to the effect that the  
18 juvenile is mentally ill or is developmentally disabled, the court shall refer the juvenile  
19 to the area mental health, developmental disabilities, and substance abuse services  
20 director for appropriate action. A juvenile shall not be committed directly to a State  
21 hospital or mental retardation center; and orders purporting to commit a juvenile  
22 directly to a State hospital or mental retardation center except for an examination to  
23 determine capacity to proceed shall be void and of no effect. The area mental health,  
24 developmental disabilities, and substance abuse director shall be responsible for  
25 arranging an interdisciplinary evaluation of the juvenile and mobilizing resources to  
26 meet the juvenile's needs. If institutionalization is determined to be the best service for  
27 the juvenile, admission shall be with the voluntary consent of the parent, guardian, or  
28 custodian. If the parent, guardian, or custodian refuses to consent to a mental hospital or  
29 retardation center admission after such institutionalization is recommended by the area  
30 mental health, developmental disabilities, and substance abuse director, the signature  
31 and consent of the court may be substituted for that purpose. In all cases in which a  
32 regional mental hospital refuses admission to a juvenile referred for admission by the  
33 court and an area mental health, developmental disabilities, and substance abuse  
34 director or discharges a juvenile previously admitted on court referral prior to  
35 completion of the juvenile's treatment, the hospital shall submit to the court a written  
36 report setting out the reasons for denial of admission or discharge and setting out the  
37 juvenile's diagnosis, indications of mental illness, indications of need for treatment, and  
38 a statement as to the location of any facility known to have a treatment program for the  
39 juvenile in question."

40 **SECTION 4.** This act becomes effective October 1, 2001.