

# Overview of Incapacity to Proceed

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## I. Standard for Capacity to Proceed to Trial

- Requirement of Capacity
- Test of Capacity
  - GS 15A-1001(a)
  - *Mental Illness or Defect*
  - *Capabilities*
    - *Understand nature and object of proceedings*
    - *Comprehend his situation relative to the proceedings*
    - *Ability to assist in defense in a rational or reasonable manner*
      - *Ability to cooperate with counsel*
- Medication
- Time of Determination
  - GS 15A-1002
- Compared to Standard for Insanity Defense

## II. Type of Crime Charged

➤ Misdemeanors

➤ Felonies

NOTE: Period of Confinement



## III. Psychiatric Examination

➤ By Private expert

➤ By State facility or local examiner



**AOC Forms:**

- AOC-CR-207 (Local)
- AOC-CR-208 (Central Regional)

## IV. Examination Process

- First Examination
- Second Examination
  - *Motion for Examination by Prosecutor*
- Who Conducts Examination
  - *Misdemeanors – GS 15A-1002(b)(1)*
  - *Felonies – GS 15A-1002(b)(2)*
- Report of Examination

## V. Post-Examination Procedure

- After Examination Finding Defendant Capable to Proceed
- After Examination Finding Defendant Incapable to Proceed
  - *GS 15A-1002(b1)*
    - *Dismissal*
    - *Stipulation*
    - *Hearing*
    - *Involuntary Commitment Under GS Chapter 122C (AOC-SP-304)*

## VI. Hearing on Capacity to Proceed

GS 15A-1002(b)



## VII. Procedure After Entry of Order of Incapacity to Proceed

### ➤ Constitutional Background

- *Jackson v. Indiana*, 406 US 715 (1972)
  - *Equal Protection*
  - *Due Process*

### ➤ Referral for Involuntary Commitment under GS Chapter 122C, Article 5, Part 7

- GS 15A-1003
- GS 122C-261(e)
- GS 122C-263

## VII. Procedure After Order of Incapacity to Proceed (cont'd)

### ➤ Grounds for Involuntary Commitment

GS 122C-261

- Mentally ill *and*
- Dangerous to self or others, *or*
- In need of treatment to prevent further disability or deterioration that would predictably result in dangerousness

## VII. Procedure After Order of Incapacity to Proceed (cont'd)

### ➤ Commitment Procedure for Nonviolent Offenses

- *First Examination (local)*
  - GS 122C-263
- *Second Examination*
  - GS 122C-266
- *Release Pending Hearing*
  - GS 122C-277
- *Commitment Hearing and Rehearing(s)*
  - GS 122C-267 thru GS 122C-277
- *Termination of Commitment*

## VII. Procedure After Order of Incapacity to Proceed (cont'd)

### ➤ Commitment Procedure for Violent Offenses

- *Directly to 24-hour facility*
  - GS 15A-1003(a); GS 122C-263(b)(2); GS 122C-266(b)
- *Release Pending Hearing*
  - GS 122C-252; GS 122C-266(b); GS 122C-277(b)
- *Termination of Commitment*

## VII. Procedure After Order of Incapacity to Proceed (cont'd)

### ➤ Disposition of Criminal Case While Defendant Lacks Capacity to Proceed

- ❖ *Orders for Safeguarding of Defendant and Return for Trial (GS 15A-1004)*
  - *Dismissal of Charges by Court*
    - GS 15A-1008; see *Jackson v. Indiana*
  - *Dismissal of Charges by Prosecutor*
    - GS 15A-1009
  - *Pretrial Release*
    - GS 15A-1004(b); see *Jackson v. Indiana*
  - *Other Motions*
    - GS 15A-1001(b); see *Jackson v. Indiana*

## VII. Procedure After Order of Incapacity to Proceed (cont'd)

### ➤ Redetermination of Capacity

- GS 15A-1004 through GS 15A-1007



## CYCLE....

at Termination of Commitment



## Some Significant Changes in the Law

