February 15, 2001

H 138. JUVENILE CAPACITY TO PROCEED. *TO ESTABLISH PROCEDURES IN THE JUVENILE CODE FOR JUVENILES WHO LACK CAPACITY TO PROCEED*. Adds new Art. 23A to GS Ch. 7B. Provides that no juvenile may be transferred to superior court, adjudicated delinquent, or given a disposition for a delinquent act when the juvenile lacks the capacity to proceed. Incapacity to proceed means 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 a rational or reasonable manner in the juvenile's defense. Sets forth procedures for determining the juvenile's capacity to proceed. The issue may be raised at any time by the court or on motion of the prosecutor or the juvenile. After the question is raised, the court shall hold a hearing to determine the juvenile's capacity to proceed. The court may order an examination by a mental health expert and defer the hearing until after the examination is completed. If a mental health expert determines the juvenile does not have the capacity to proceed, the expert shall prepare a report describing the cause of the incapacity and including the expert's assessment of the likelihood that the juvenile will gain the capacity to proceed and the juvenile's need for treatment. The clerk of superior court shall receive the report, forward it to appropriate parties, and seal and keep confidential the copy of the report that is kept in the clerk's files. The report and expert testimony is admissible in the hearing. If the court determines the juvenile is capable of proceeding, it must make written findings of the capacity to proceed. If the court finds the juvenile lacks the capacity to proceed, the court shall conduct an additional hearing and make findings as to (1) the likelihood the juvenile will gain the capacity to proceed, (2) the juvenile's need for further evaluation or treatment, and (3) whether there are reasonable grounds to believe the juvenile meets the criteria for involuntary civil commitment. The court shall then either dismiss the petition or continue it for no more than six months. Criteria for dismissal with prejudice or with leave are set forth in the bill. If the case is continued, the court may (1) place the juvenile in the custody of a parent, guardian, custodian, or other suitable person or agency; (2) set conditions necessary to protect the juvenile or the public or to ensure the juvenile's return to court; and (3) conduct an additional hearing or issue additional orders pursuant to GS 7B-2502 (pertaining to the evaluation and treatment of juveniles). If the court finds reasonable grounds to believe the juvenile meets the criteria for involuntary civil commitment, the court shall make findings of fact, issue a custody order, and proceed in accordance with GS Ch. 122C, Art. 5, Part 7.

Provides that the privilege against self-incrimination applies to any examination ordered by the court to determine capacity to proceed, and that statements made by the juvenile during the examination are not admissible at any adjudication or criminal proceeding against the juvenile for other allegations of delinquency or criminal charges.

Amends GS 7B-2502 to provide that procedures for determining the treatment needs of undisciplined and delinquent juveniles also apply to juveniles alleged to be delinquent and found incapable of proceeding.

Effective Oct. 1, 2001.

Intro. by Baddour.

Ref. To Judiciary II	GS 7B