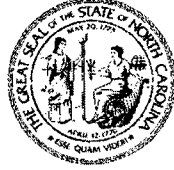


NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE RESEARCH COMMISSION

STATE LEGISLATIVE BUILDING

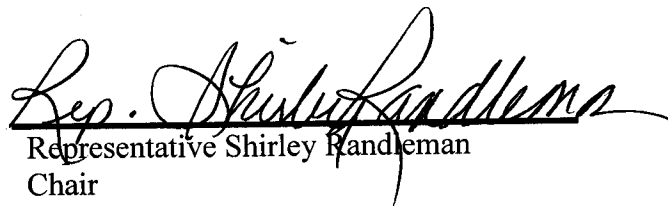
RALEIGH, NC 27601



April 17, 2012

TO THE MEMBERS OF THE LEGISLATIVE RESEARCH COMMISSION:

Attached for your consideration is the report to the 2012 Regular Session of the 2011 General Assembly. This report was prepared by the Legislative Research Commission's Committee on Incapacity to Proceed, pursuant to G.S. 120-30.17(1).


Representative Shirley Handelman
Chair

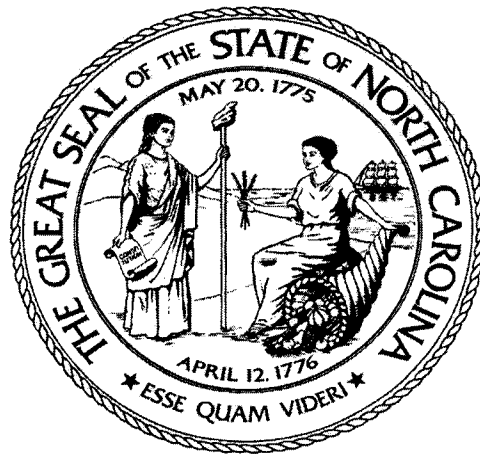
Chair
Committee on Incapacity to Proceed
Legislative Research Commission

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LEGISLATIVE RESEARCH COMMISSION

**INCAPACITY TO PROCEED
COMMITTEE**

NORTH CAROLINA GENERAL ASSEMBLY



**REPORT TO THE
2012 SESSION
of the
2011 GENERAL ASSEMBLY
OF NORTH CAROLINA**

APRIL, 2012

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TRANSMITTAL LETTER

April 17, 2012

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TO THE MEMBERS OF THE 2012 REGULAR SESSION
OF THE 2011 GENERAL ASSEMBLY

The Legislative Research Commission herewith submits to you for your consideration its report and recommendations to the 2012 Regular Session of the 2011 General Assembly. The report was prepared by the Legislative Research Commission's Committee on Incapacity to Proceed, pursuant to G.S. 120-30.70(1).

Respectfully submitted,

Senator Philip E. Berger
President Pro Tempore of the Senate

Representative Thomas R. Tillis
Speaker of the House of Representatives

Co-Chairs
Legislative Research Commission

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LEGISLATIVE RESEARCH COMMISSION MEMBERSHIP

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2011 – 2012

President Pro Tempore of the Senate

Senator Philip E. Berger
Co-Chair

Senator Thomas M. Apodaca
Acting Co-Chair

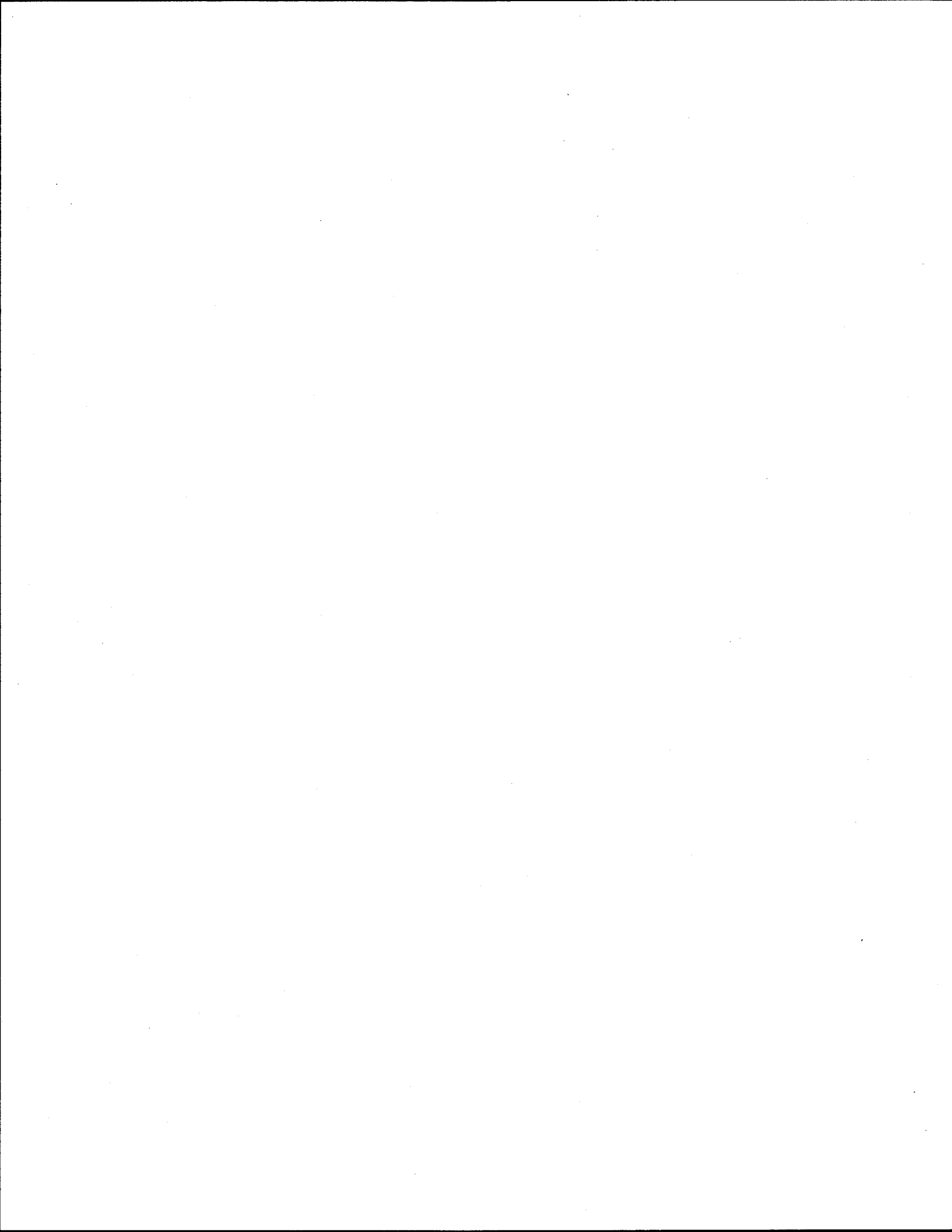
Senator Peter S. Brunstetter
Senator Linda D. Garrou
Senator Martin L. Nesbitt, Jr.
Senator Richard Y. Stevens

Speaker of the House of Representatives

Representative Thomas R. Tillis
Co-Chair

Representative Timothy K. Moore
Acting Co-Chair

Representative John M. Blust
Representative Justin P. Burr
Representative Mike D. Hager
Representative Edith D. Warren

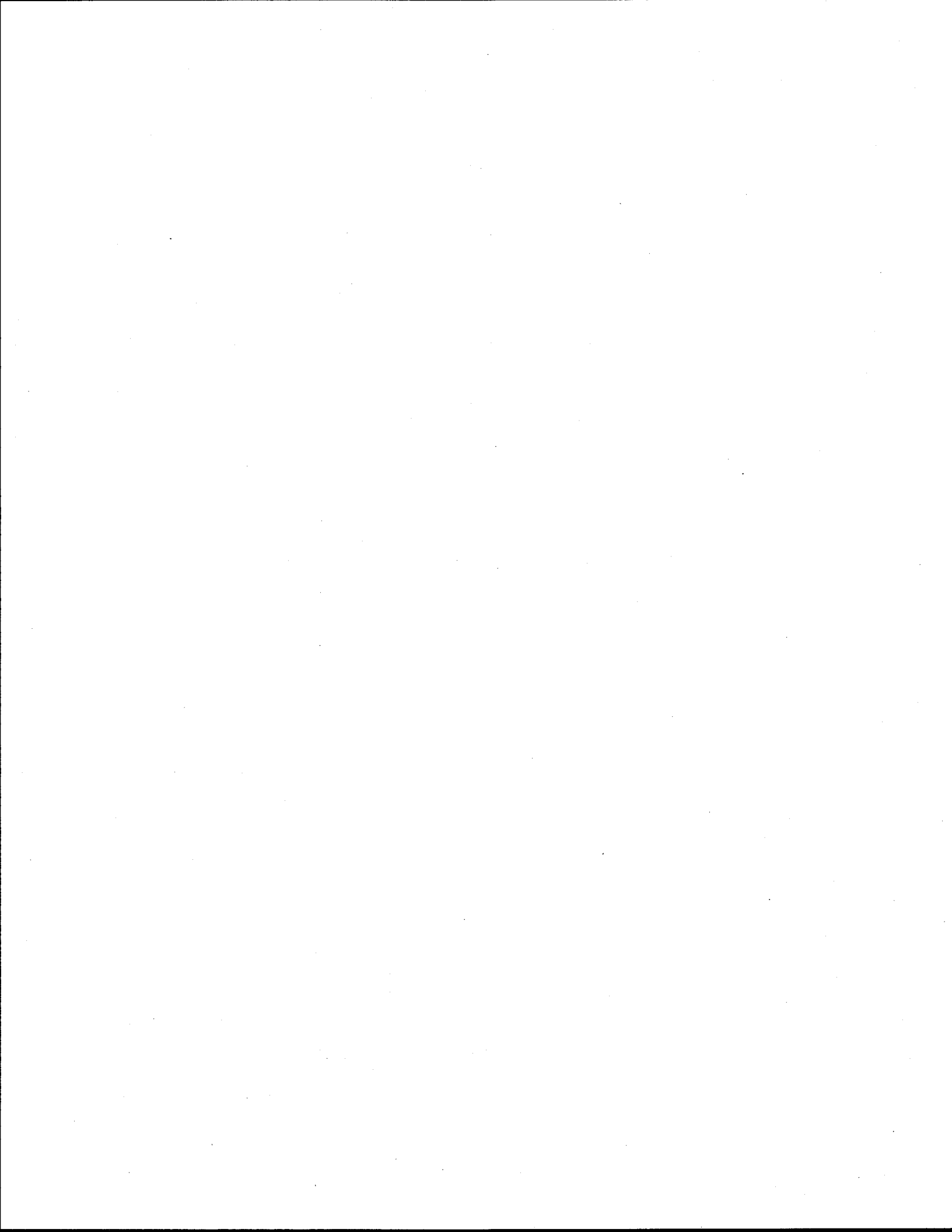


PREFACE

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The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is the general purpose study group in the Legislative Branch of State Government. The Commission is co-chaired by the President Pro Tempore of the Senate and the Speaker of the House of Representatives and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of an investigation into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

The Legislative Research Commission authorized the study of Incapacity to Proceed, under authority of G.S. 120-30.17(1). The Committee was chaired by Representative Shirley Randleman. The full membership of the Committee is listed under [Committee Membership](#). A committee notebook containing the committee minutes and all information presented to the committee will be filed in the Legislative Library by the end of the **2011-2012** biennium.



COMMITTEE PROCEEDINGS

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The Legislative Research Commission's Committee on Incapacity to Proceed met four times after the 2011 Regular Session. The Committee's Charge can be found [here](#). The following is a brief summary of the Committee's proceedings. Detailed minutes and information from each Committee meeting are available in the Legislative Library.

The Legislative Research Commission Committee on Incapacity to Proceed was established to consider the adequacy of the involuntary commitment process for a criminal defendant who lacks the capacity to proceed to trial. The Committee was authorized to consider the impact of current law on the limited resources of local law enforcement, hospitals, mental health facilities, and the State's court system while balancing the rights of the accused, victims, and the safety and the general welfare of the public. The Committee was also authorized to consider options for determining whether a defendant is likely to attain the capacity to proceed to trial in the foreseeable future and at what point in the process that determination should be made.

The Committee met four times from November 9, 2011, to April 17, 2012. At each meeting, the Committee provided interested parties an opportunity to be heard on the issues and received public comment. Detailed minutes and information from each Commission meeting are available in the Legislative Library.

November 9, 2011 Meeting

The first meeting of the Legislative Research Commission Subcommittee on Incapacity to Proceed was held on November 9, 2011. Following introductions of those present and opening remarks by Chair Shirley Randleman, the Committee adopted its operating budget. The following presentations were made:

- Committee co-counsel Hal Pell described the genesis of the current procedures relating to a defendant's incapacity to proceed and the need to comply with constitutional due process and equal protection concerns addressed in the 1972 United States Supreme Court case, *Jackson v. Indiana*.
- Committee co-counsel Janice Paul provided the background and overview of the North Carolina laws governing incapacity to proceed and the civil commitment process. A PowerPoint presentation is included in the Committee minutes.
- Chair Randleman described the situation that arose within her community which prompted her to request a study. She reiterated that the Committee's

mission is to promote efficiency and safeguards for everyone, including the general public.

- John Rubin, UNC School of Government noted that the SOG conducts training, consultation, and research for individuals, courts, and the criminal justice system. He discussed the legal standard which applies to incapacity to proceed, which differs from that applied to civil commitment proceedings.
- Brad Greenway, District Attorney for the 29A Prosecutorial District, discussed specific concerns that arise when a defendant has committed a crime, is found incapable to proceed, might never gain the capacity to proceed, but does not meet commitment criteria.
- Andrew Cagle, North Carolina Sheriffs Association, expressed concern over manpower and actual transportation costs associated with transporting defendants between jails and mental health facilities.
- Dr. Mark Hazelrigg, Director of Outpatient Evaluations at Central Regional Hospital, said that the differences in the legal standard for capacity to proceed and the standard for involuntary commitment cause a circular system, and expressed concern that there is no statutory mandate or even suggestion that hospitals provide services designed to restore an individual's capacity to proceed.
- Richard Slipsky, Special Deputy Attorney General, observed that most of the cases start in Superior Court, but after a defendant is released from a commitment, the case comes back in through a District/jail court. He expressed concern about transportation costs as well as the cost of maintaining someone in a state hospital who does not need to be there. He echoed Dr. Hazelrigg's concern that the statutes do not specify restorative measures for capacity, even though most patients who are confined in a hospital would like to have their criminal charges resolved.

The Chair then opened the floor for discussion and questions.

January 11, 2012 Meeting

In its second meeting on January 11, 2012, the Committee had a round-table discussion of various agencies' roles and interest in the incapacity to proceed process, any perceived problems, and potential solutions to those problems. Chair Randleman stressed the importance of coming up with draft legislation that can proceed through the General Assembly during the 2012 Short Session. Details of this discussion are contained in the Committee minutes.

John Rubin, UNC School of Government, presented case studies involving both misdemeanor and felony offenders whose capacity to proceed was questioned.

The floor was opened for questions and comment. Information was exchanged about the following:

- Who is qualified to conduct local forensic examinations;
- The time frame time reporting by the regional hospital;
- The procedure after individuals are released back to jail;
- Problems of decompensating in the jails;
- Issues relating to dismissal of charges;
- Notification to the court and interested parties of the defendant's mental health status;
- Subsequent hearings on restoration of capacity;
- Problems relating to individuals who are housed as safekeepers at Central Prison and who are not receiving mental health treatment;
- Approaches to expedite the process of screening and examination;
- Tracking and monitoring;
- Privacy issues.

Recommendations included:

- The need for judges to take evidence and make findings of fact on capacity to proceed;
- Specific changes to G.S. 15A-1008 relating to dismissal;
- The repeal of G.S. 15A-1009 concerning dismissal with leave when a defendant is found incapable of proceeding;
- Credentialing of forensic examiners.;
- Authorizing examiners to have access to many pieces of information (mental health treatment, criminal background, jail records, indictments, and police investigative reports);
- Mandated treatment to restore an individual's capacity to proceed;
- Implementation of a process to allow forensic units to re-evaluate an individual's capacity before being returned to jail;
- Mandatory training of judges, attorneys, and law enforcement personnel regarding incapacity to proceed and commitment procedures;
- Enhanced coordination, communication between various agencies, and accountability within the process;
- Establishing time limits on the proceedings;
- Greater training of examiners to identify and treat specific mental health disabilities, the establishment of specialized facilities for individuals with such disabilities, and the recognition that people with certain disabilities will most likely never be found capable to proceed in court.

February 8, 2012 Meeting

The Committee held its third meeting on February 8, 2012. The meeting's focus was on discussing proposed legislation and recommendations designed to make improvements in the capacity to proceed process. The following issues and proposals were discussed:

- Training for local forensic evaluators.
- Re-evaluation of defendants for a capacity determination prior to being returned to the jail from a state facility.
- Forensic evaluators' access to records.
- Time limits for forensic evaluations.
- Reporting a defendant's level of cooperation with the forensic examination.
- Minimum period of inpatient evaluation and observation.
- Requiring that defendants receive treatment to restore capacity to proceed.
- Reports to the court, parties, and communication and tracking issues.
- Notices of supplemental hearings.
- Dismissal of criminal charges.
- Requirement that court make findings of fact as to capacity to proceed.
- Methods of expediting cases for trial.
- Pretrial release for individuals with intellectual or developmental disabilities.
- Transportation issues.
- Bond, placement and other pretrial release issues for individuals with serious mental health issues.

Details of the discussion are contained in the Committee minutes.

After receiving input from Committee members and interested persons, the Committee voted that the General Assembly enact legislation to make changes to the process and procedures regarding incapacity to proceed, as follows:

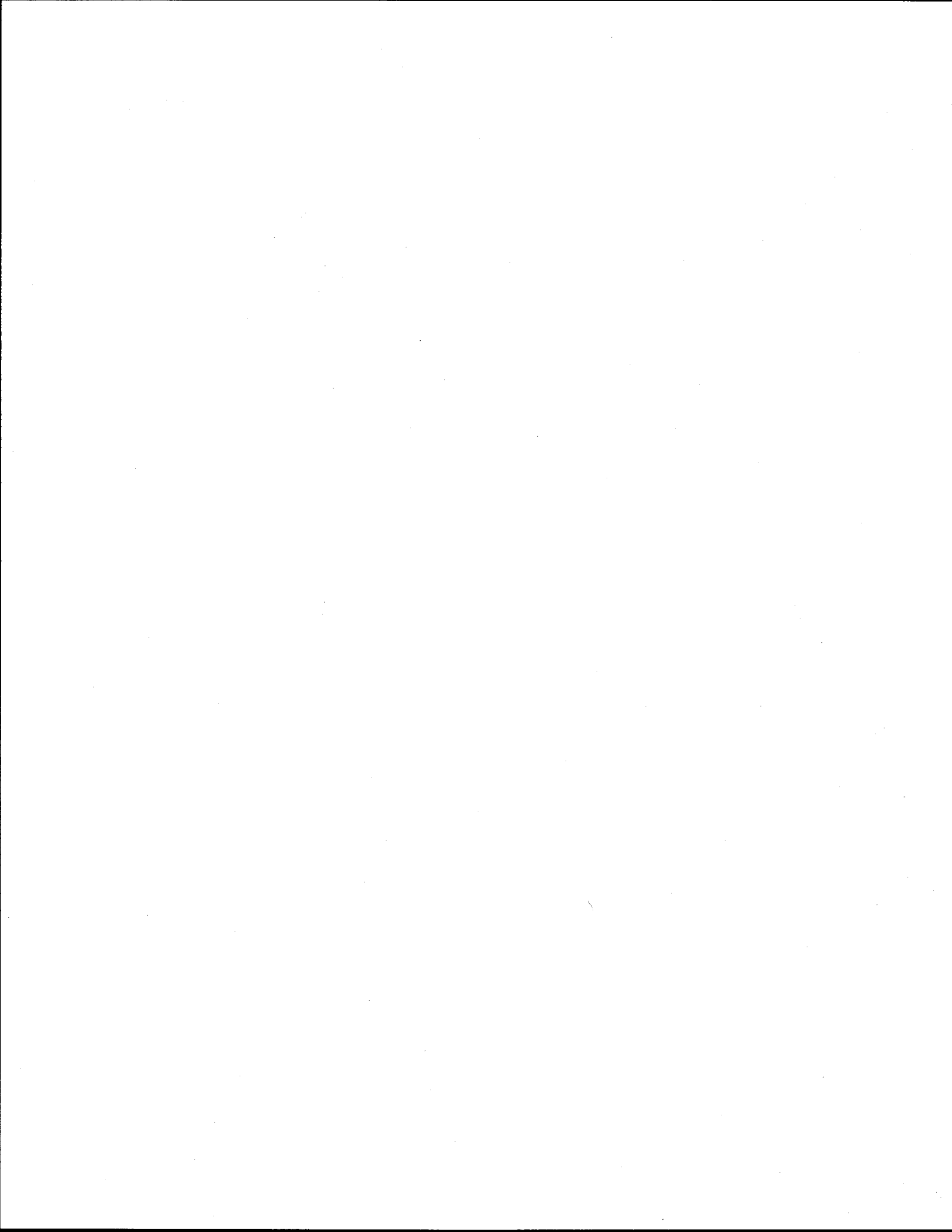
- To provide that evaluation for misdemeanants be conducted locally only, and not at state facilities.
- To authorize a judge to order the release of confidential information to the forensic examiner.
- To require a court order to include findings of fact to support its determination regarding capacity to proceed.
- To provide time limits for reports to the court.
- To provide that the sheriff receive a copy of the covering statement of the forensic examiner's final report.
- To require that a defendant be examined for a determination of capacity to proceed prior to release from an involuntary civil commitment.
- To specify procedures relating to the return of the defendant for trial upon gaining capacity to proceed.

- To require expedited calendaring of cases for trial after a defendant gains capacity to proceed.
- To require dismissal of criminal charges in specified circumstances.
- To require that reports contain treatment recommendations, if any.
- To make conforming changes to G.S. Chapter 122C.

The Committee voted to include the following possible recommendations in its draft final report:

- That the Committee on Justice and Public Safety study the possibility of mandating that all law enforcement officers have crisis intervention training in order to recognize mental health issues and identify individuals with intellectual/developmental disabilities and to better deal with individuals with mental health issues or intellectual/developmental disabilities during the period of transportation and custody.
- That the Administrative Office of the Courts, in consultation with the School of Government, study whether defense attorneys, prosecutors and judges should be required to receive specific training on recognizing signs of mental illness and dealing with defendants that may be incapable of proceeding, and report the results of that study to the Committee on Justice and Public Safety.
- That the Joint Legislative Oversight Committee on Health and Human Services study the issue of transporting defendants who are being evaluated for determination of capacity to proceed, or who have been found incapable of proceeding. Possible issues to study include, whether the same-gender transportation requirement of G.S. 122C-251 should be repealed and whether it would be appropriate and feasible to develop a system where evaluators from the State facility could evaluate offenders charged with lower level felonies on-site in the county where the charges are pending as an alternative to transporting the offender to the State facility.
- That the Joint Legislative Oversight Committee on Health and Human Services study whether individuals with serious mental health issues or intellectual/developmental disabilities and lack of capacity to proceed should be released from jail to an appropriate mental health placement on a more expedited basis, and if so, the best method and process to facilitate that recommendation.

Rep. Burr informed the Committee that the Joint Legislative Oversight Committee on Health and Human Services was already considering the issue of whether it would be appropriate and feasible to open forensic units specifically focused on evaluating and providing habilitative services for individuals with intellectual or developmental disabilities and specialized in the care of incarcerated individuals diagnosed with intellectual or developmental disabilities.



FINDINGS AND RECOMMENDATIONS

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FINDINGS:

The Committee finds that comprehensive procedural changes need to be made in the process relating to determinations of a criminal defendant's incapacity to proceed to trial, in view of limited resources of law enforcement, hospitals, and mental health facilities, in consideration of a defendant's legal and mental status as they relate to providing a fair trial, and in order to promote efficiency in the overall judicial process in matters relating to incapacity to proceed. As a result of these findings, the Committee makes the following Recommendations:

RECOMMENDATION 1:

The Committee recommends that the General Assembly enact legislation (attached) to make changes to the process and procedures regarding incapacity to proceed.

RECOMMENDATION 2:

The Committee recommends that the Committee on Justice and Public Safety study the possibility of mandating that all law enforcement officers have crisis intervention training in order to recognize mental health issues and to identify individuals with intellectual or developmental disabilities during period of transportation and custody and to interact with them appropriately.

RECOMMENDATION 3:

The Committee recommends that the Administrative Office of the Courts, in consultation with the School of Government, study whether defense attorneys, prosecutors and judges should be required to receive specific training on recognizing signs of mental illness and intellectual or developmental disabilities and dealing with defendants who may be incapable of proceeding, and report the results of that study to the Committee on Justice and Public Safety.

RECOMMENDATION 4:

The Committee recommends that the Joint Legislative Oversight Committee on Health and Human Services continue to study whether it would be appropriate and feasible to open forensic units specifically focused on evaluating and providing habilitative services for individuals with intellectual or developmental disabilities and specialized in the care of incarcerated individuals diagnosed with intellectual or developmental disabilities.

RECOMMENDATION 5:

The Committee recommends that the Joint Legislative Oversight Committee on Health and Human Services study the issue of transporting defendants who are being evaluated for determination of capacity to proceed, or who have been found incapable of proceeding. Possible issues to study include: (1) whether the same-gender transportation requirement of G.S. 122C-251 should be repealed; (2) whether it would be appropriate and feasible to develop a system where evaluators from the State facility could evaluate offenders charged with lower level felonies on-site in the county where the charges are pending as an alternative to transporting the offender to the State facility; and (3) whether forensic evaluators can be assigned to each of the three State psychiatric hospitals to minimize the transportation demands on local law enforcement agencies.

RECOMMENDATION 6:

The Committee recommends that the Joint Legislative Oversight Committee on Health and Human Services study whether individuals with serious mental health issues, intellectual or developmental disabilities, and lack of capacity to proceed should be released from jail to an appropriate mental health placement on a more expedited basis, and if so, the best method and process to facilitate that recommendation.

COMMITTEE MEMBERSHIP

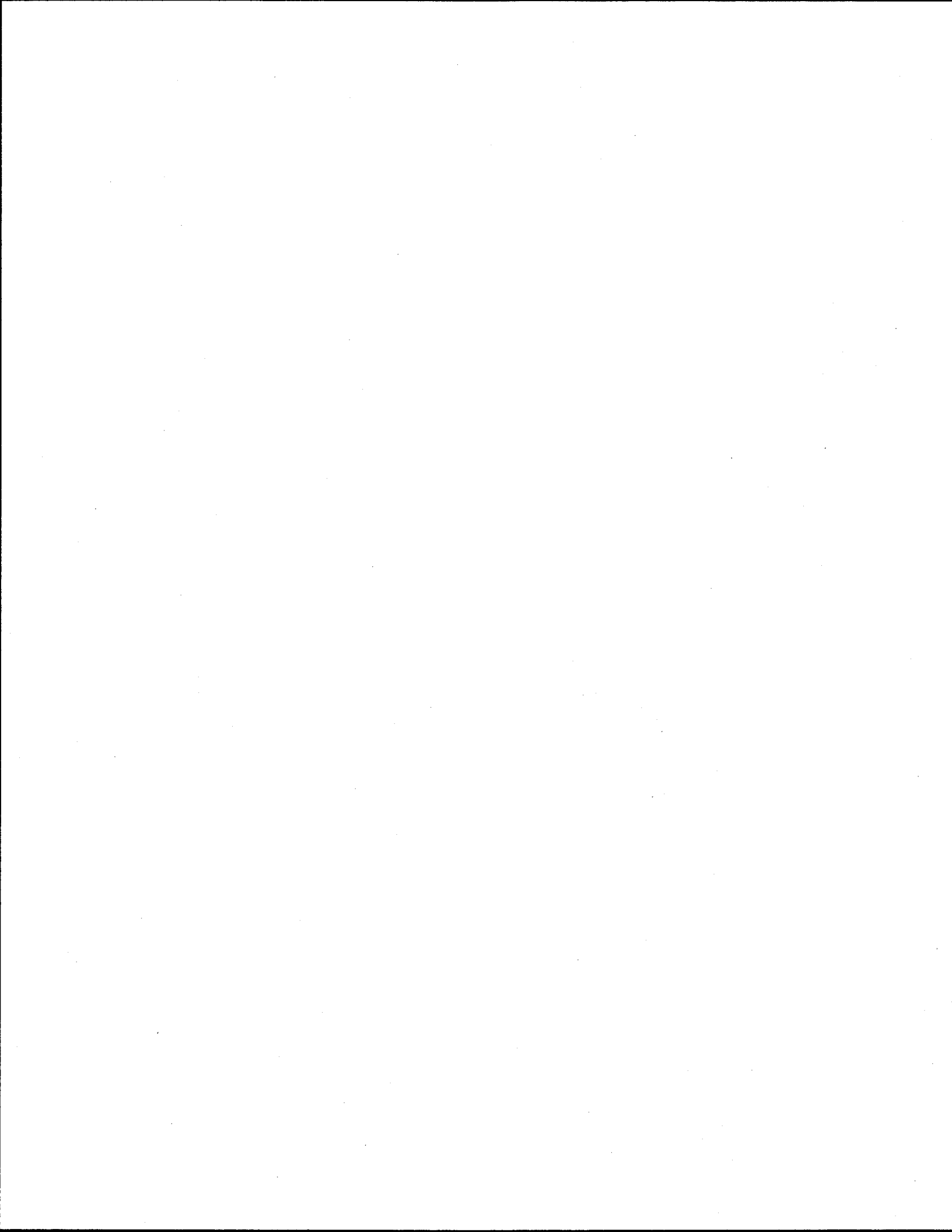
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2011-2012

Speaker of the House of Representatives Appointments:

Representative Shirley Randleman, Co-Chair

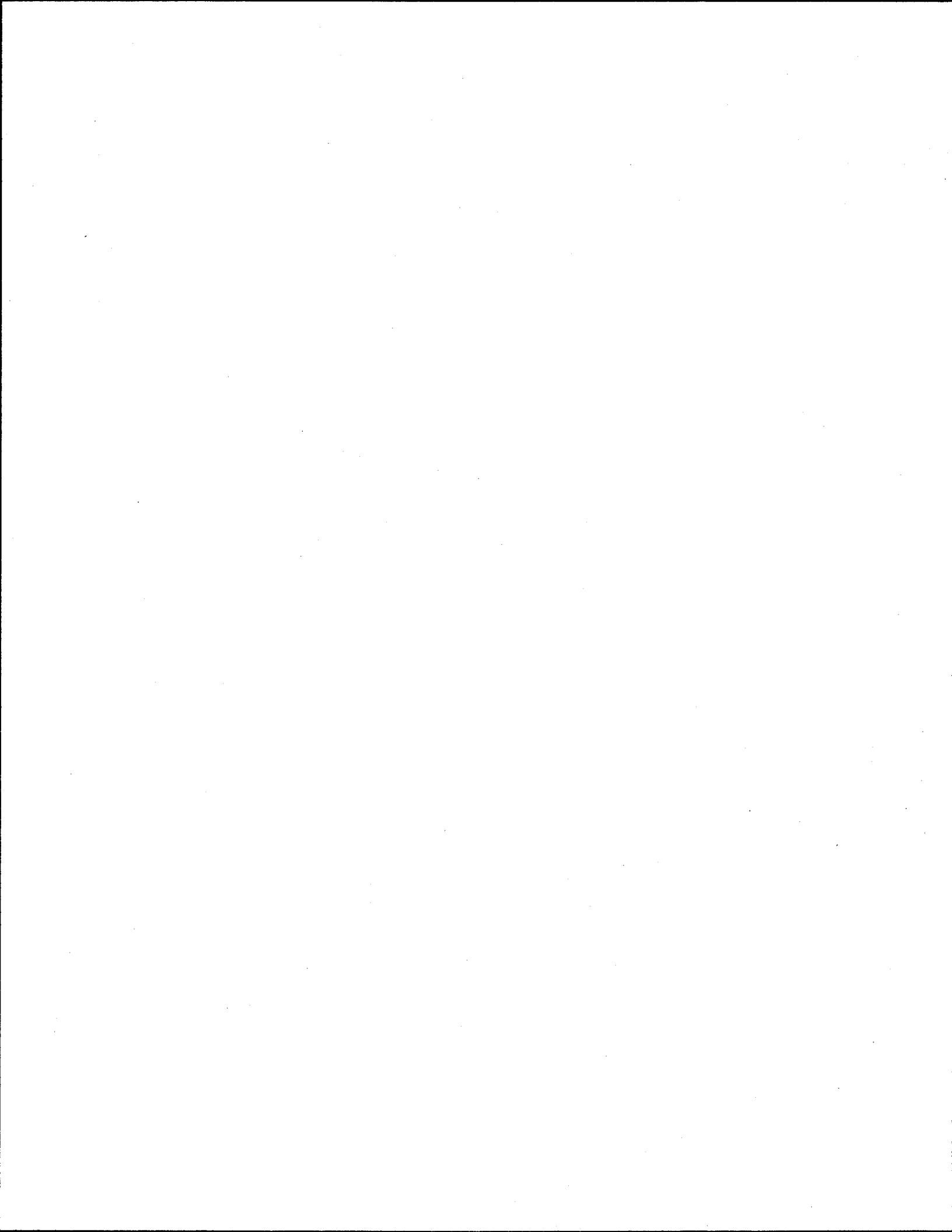
Representative Justin Burr
Representative John Faircloth
Representative Pat Hurley
Representative Frank McGuirt



COMMITTEE CHARGE

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Incapacity to Proceed (H.J.R. 612 - Randleman, Hurley) - The Commission may study the adequacy of the involuntary commitment process for a criminal defendant who lacks the capacity to proceed to trial. In its study, the Commission may consider the impact of current law on the limited resources of local law enforcement, hospitals, mental health facilities, and the State's court system while balancing the rights of the accused, victims, and the safety and the general welfare of the public. The Commission may also consider options for determining whether a defendant is likely to attain the capacity to proceed to trial in the foreseeable future and at what point in the process that determination should be made. The Commission may evaluate the statutory option of taking dismissals in these types of cases for defendants who are charged with nonviolent crimes and for defendants who are charged with violent crimes, how often that option is used, and at what point and under what circumstances that option should be used. In addition, the Commission may consider all of the following: issues related to transportation, including the frequency, distance, and cost associated with the required psychiatric evaluations; duration of involuntary commitment for defendants found incapable of proceeding to trial pursuant to Article 56 of Chapter 15A of the General Statutes and involuntarily committed pursuant to Part 7 of Article 5 of Chapter 122C of the General Statutes; and any other issues the Commission considers relevant to this topic.



STATUTORY AUTHORITY

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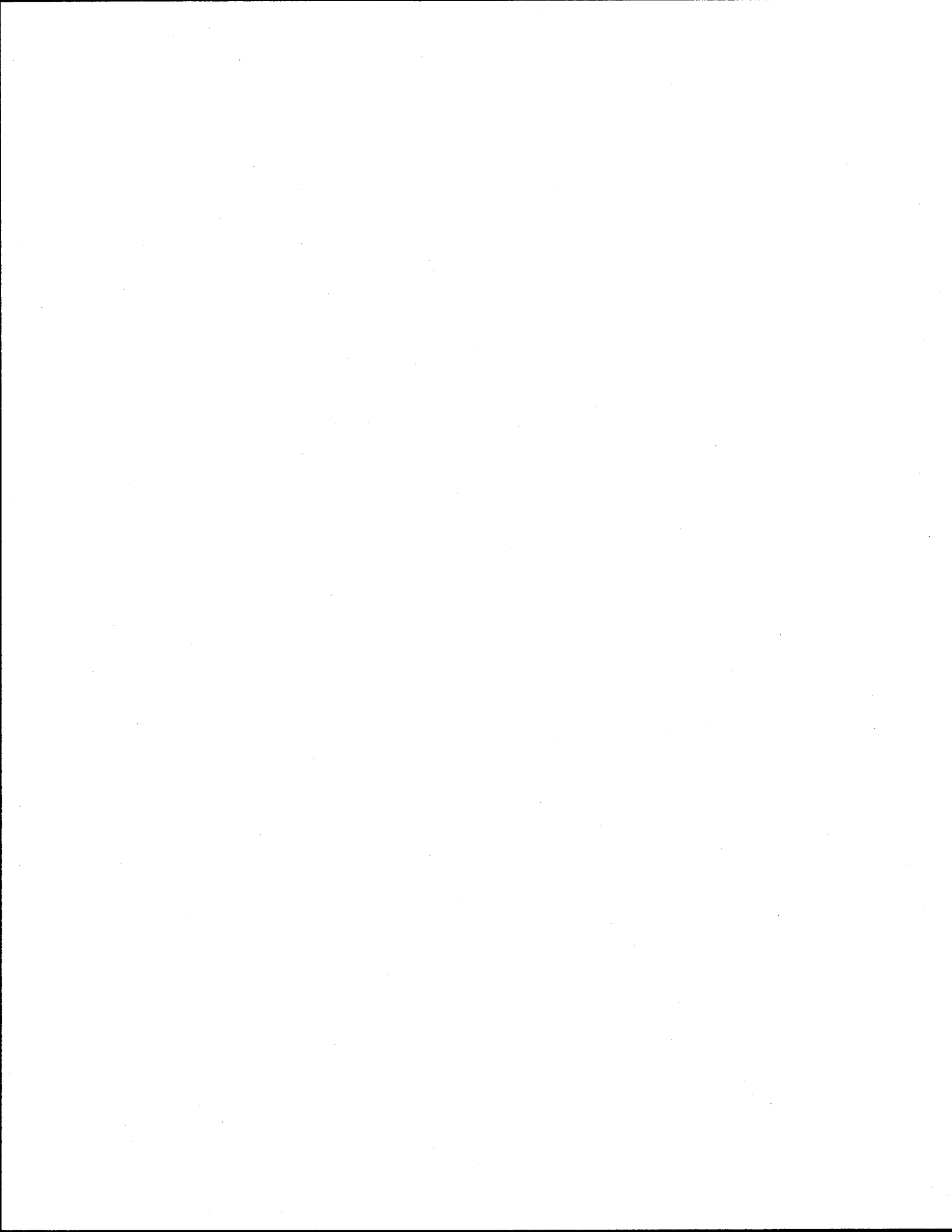
NORTH CAROLINA GENERAL STATUTES ARTICLE 6B.

Legislative Research Commission.

§ 120-30.17. Powers and duties.

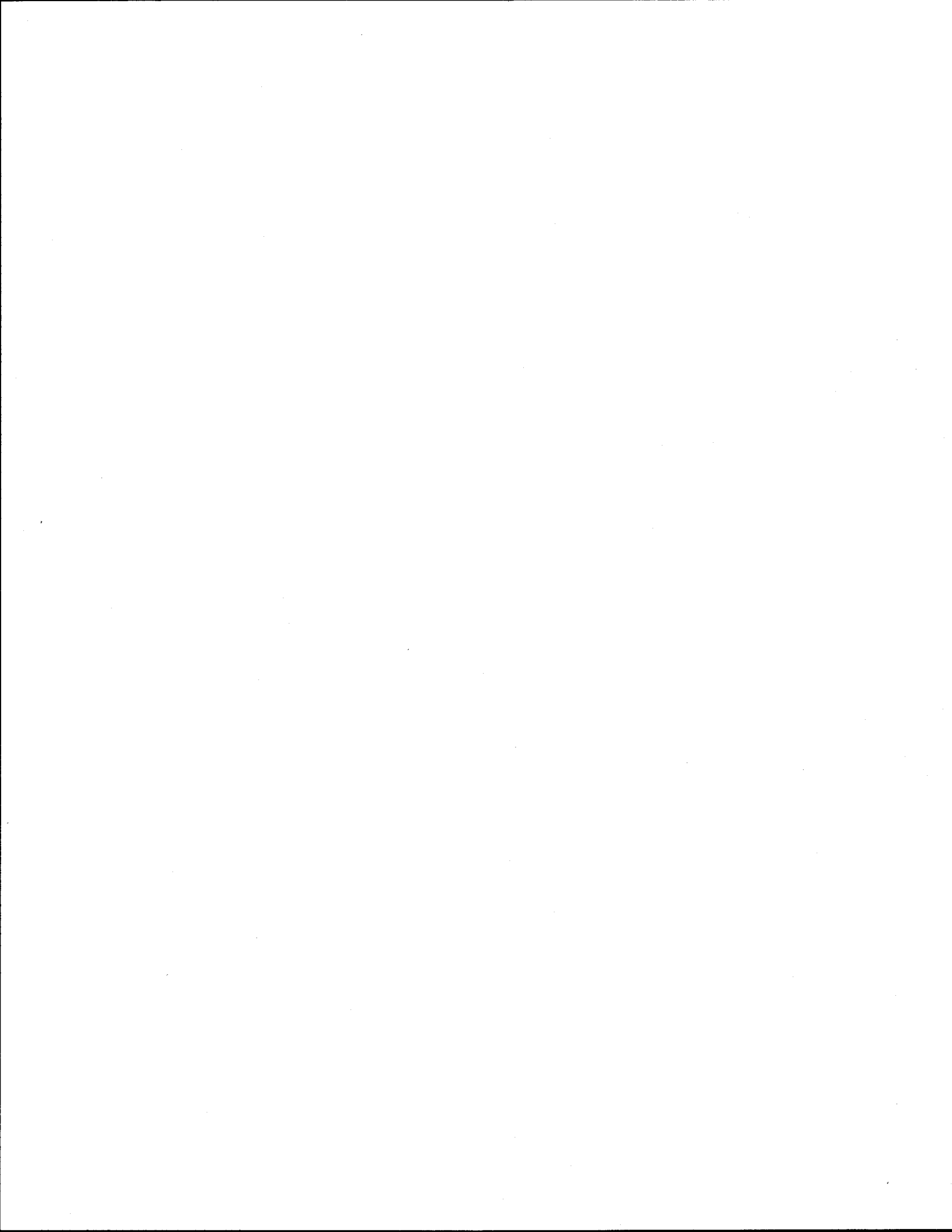
The Legislative Research Commission has the following powers and duties:

- (1) Pursuant to the direction of the General Assembly or either house thereof, or of the chairmen, to make or cause to be made such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner.
- (2) To report to the General Assembly the results of the studies made. The reports may be accompanied by the recommendations of the Commission and bills suggested to effectuate the recommendations.
- (3), (4) Repealed by Session Laws 1969, c. 1184, s. 8.
- (5), (6) Repealed by Session Laws 1981, c. 688, s. 2.
- (7) To obtain information and data from all State officers, agents, agencies and departments, while in discharge of its duty, pursuant to the provisions of G.S. 120-19 as if it were a committee of the General Assembly.
- (8) To call witnesses and compel testimony relevant to any matter properly before the Commission or any of its committees. The provisions of G.S. 120-19.1 through G.S. 120-19.4 shall apply to the proceedings of the Commission and its committees as if each were a joint committee of the General Assembly. In addition to the other signatures required for the issuance of a subpoena under this subsection, the subpoena shall also be signed by the members of the Commission or of its committee who vote for the issuance of the subpoena.
- (9) For studies authorized to be made by the Legislative Research Commission, to request another State agency, board, commission or committee to conduct the study if the Legislative Research Commission determines that the other body is a more appropriate vehicle with which to conduct the study. If the other body agrees, and no legislation specifically provides otherwise, that body shall conduct the study as if the original authorization had assigned the study to that body and shall report to the General Assembly at the same time other studies to be conducted by the Legislative Research Commission are to be reported. The other agency shall conduct the transferred study within the funds already assigned to it.



LEGISLATIVE PROPOSALS

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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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BILL DRAFT 2011-SA-18A [v.1] (03/01)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
4/24/2012 2:01:06 PM

Short Title: Incapacity to Proceed Amendments.

(Public)

Sponsors:

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS GOVERNING INCAPACITY TO PROCEED AS
RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION.

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

1 observation and treatment for the period, not to exceed 60 days,
2 necessary to determine the defendant's capacity to proceed; ~~in the case~~
3 ~~of a defendant charged with a felony, if proceed.~~ If a defendant is
4 ordered to a State facility without first having an examination pursuant
5 to subsection (b)(1) of this section, the judge shall make a finding that
6 an examination pursuant to this subsection would be more appropriate
7 to determine the defendant's ~~capaicity; the~~capacity. The sheriff shall
8 return the defendant to the county when notified that the evaluation has
9 been ~~completed; the~~completed. The director of the facility shall direct
10 his report on defendant's condition to the defense attorney and to the
11 clerk of superior court, who shall bring it to the attention of the ~~court;~~
12 ~~thecourt.~~ The report is admissible at the hearing.

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

14 (4) A presiding district or superior court judge of this State who orders an
15 examination pursuant to subdivision (1) or (2) of this subsection shall
16 order the release of relevant confidential information to the examiner,
17 including but not limited to, the warrant or indictment, arrest records,
18 the law enforcement incident report, the defendant's criminal record,
19 jail records, any prior medical and mental health records of the
20 defendant, and any school records of the defendant, after providing the
21 defendant with reasonable notice and an opportunity to be heard and
22 then determining that the information is relevant and necessary to the
23 hearing of the matter before the court and unavailable from any other
24 source. This subdivision shall not be construed to relieve any court of
25 its duty to conduct hearings and make findings required under relevant
26 federal law before ording the release of any private medical or mental
27 health information or records related to substance abuse or HIV status
28 or treatment. The records may be surrendered to the court, for in
29 camera review, if surrender is necessary to make the required
30 determinations. The records shall be withheld from public inspection
31 and, except as provided in this subdivision, may be examined only by
32 order of the court.

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

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

44 (1) The report in a case of a defendant charged with a misdemeanor shall
45 be completed and provided to the court no later than 10 day following
46 the completion of the examination for a defendant who was in custody

1 at the time the examination order was entered, and no later than 30
2 days following the completion of the examination for a defendant who
3 was not in custody at the time the examination order was entered.

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

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

12 The court may, for good cause shown, extend the time for the provision of the report
13 to the court for up to 30 additional days. The court may renew an extension of time for
14 an additional 30 days upon request of the State or the defendant prior to the expiration
15 of the previous extension. In no case shall the court grant extensions totaling more than
16 120 days beyond the time periods otherwise provided in this subsection.

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

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

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

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