



SENATE BILL 45: Incapacity to Proceed Amendments

2013-2014 General Assembly

Committee: Senate Judiciary I
Introduced by: Sen. Randleman
Analysis of: First Edition

Date: February 27, 2013
Prepared by: Susan Sitze
Committee Counsel

SUMMARY: *Senate Bill 45 would amend the laws governing incapacity to proceed.*

[As introduced, this bill was identical to H88, as introduced by Rep. Hurley, which is currently in House Judiciary Subcommittee B.]

CURRENT LAW: In North Carolina a person may not be tried, convicted, sentenced, or punished for a crime when, because of mental illness, he or she is unable to understand the nature of the proceedings, to comprehend his or her own situation in reference to the proceedings, or to assist in his or her own defense.

BILL ANALYSIS:

Section 1 of the bill would amend several subsections of G.S. 15A-1002 which provides for determinations of capacity to proceed, evidence, temporary commitment and temporary orders.

G.S. 15A-1002(b) sets out the requirements for a hearing when the capacity of a defendant to proceed is questioned. The bill would make the following changes to the current law:

- Limits evaluations of misdemeanor defendants to the local level.
- Authorizes the court to call any expert appointed to evaluate the defendant to testify at the capacity hearing with or without the request of either party.
- Requires the court to order the release of relevant confidential information to the person doing the evaluation after providing the defendant reasonable notice and opportunity to be heard and making a determination that the information is relevant and necessary to the hearing of the matter and is unavailable from any other source. The court must conduct hearings and make findings as required by federal law before ordering the release of any private medical or mental health information or substance abuse or HIV status records. The records may be surrendered to the court for an in camera review if necessary. Records shall be withheld from public inspection and may be examined only by order of the court.

G.S. 15A-1002(b1) would be amended to require the court to make findings of fact to support its determination of the defendant's capacity to proceed. Parties would be allowed to stipulate that the defendant is capable to proceed, but would not be allowed to stipulate that the defendant lacks capacity to proceed.

A new subsection (b2) would be added to provide time periods within which the reports of examination must be submitted to the court as follows:

- Reports of evaluation of a misdemeanor defendant shall be submitted within 10 days of completion of the examination if the defendant was in custody at the time the examination order was entered, or 20 days if the defendant was not in custody.



Senate Bill 45

Page 2

- Reports of evaluation of a felony defendant at the local level shall be submitted within 30 days of completion of the examination.
- If the defendant challenges the determination made by the court ordered examiner or the State facility and the court orders an independent examination, the examination and report must be completed within 60 days of the order for independent examination.
- The court may extend the times for good cause shown for up to 30 additional days and may renew the extension for an additional 30 days upon request of the State or the defendant made prior to the expiration of the previous extension. In no case shall the court grant extensions totaling more than 120 days beyond the original time period provided.

This section would also provide that if the defendant is being held in the custody of the sheriff, upon receipt of the report, the clerk of court shall send a copy of the covering statement attached to the report to the sheriff, who shall maintain it as a confidential record.

Section 2 would amend G.S. 15A-1004(c) to require that when a defendant has been involuntarily committed after a finding of incapacity to proceed, before they can be released from the involuntary commitment, an examination to determine whether they are capable of proceeding must be conducted, and the report provided to the clerk of court.

Section 3 would amend G.S. 15A-1006 to require that if a person found incapable of proceeding is determined to have gained capacity, the institution with custody must provide written notice to the clerk of court, who shall provide written notice to the DA, the defendant's attorney, and the sheriff. The sheriff would then return the defendant to the county for supplemental hearings.

Section 4 would amend G.S. 15A-1007 regarding supplemental hearings after a defendant has gained capacity to require the following:

- The clerk shall notify the DA that the defendant has gained capacity, and the DA shall calendar the matter for hearing at the next available term of court, but no later than 30 days after receiving notification.
- If the court determines in a supplemental hearing that the defendant has gained capacity, the case shall be calendared for trial at the earliest practicable time. Continuances that extend beyond 60 days after initial calendaring shall be granted only in extraordinary circumstances when necessary for the proper administration of justice and must be done by written order stating the grounds for continuance.

Sections 5 and 6 would amend the provisions relating to dismissal of charges when a defendant is incapable of proceeding to provide the following:

- The court must dismiss the charges upon the earliest of the following:
 - When the court determines the defendant will not gain capacity.
 - When the defendant has been confined for a period equal to or in excess of the maximum term of imprisonment permissible for the prior record level VI for felonies or prior conviction level III for misdemeanors for the most serious offense charged.
 - 5 years from the date of determination of incapacity for a misdemeanor, 10 years for a felony.
- Dismissal for confinement as long as possible sentence length shall be without leave.

Senate Bill 45

Page 3

- Other dismissals shall be issued without prejudice to refiling the charges. Upon the defendant gaining capacity, charges may be reinstituted by the DA by filing written notice with the clerk, the defendant, and the defendant's attorney of record.
- Dismissal may be upon motion of the prosecutor, defendant, or upon the court's own motion.

Section 7 would require any report done on examination of a defendant to determine capacity to proceed to contain a treatment recommendation, if any, and any opinion as to whether there is a likelihood the defendant will gain the capacity to proceed.

Section 8 would add a new statute G.S. 122C-278 to the involuntary commitment statutes. The new statute would require an examination for capacity to proceed prior to discharge of defendants committed to inpatient or outpatient treatment after being found incapable.

Section 9 would direct the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services to develop and adopt rules by December 1, 2013 to require forensic evaluators to (1) complete all training requirements necessary to be credentialed as a certified forensic evaluator and (2) attend annual continuing education seminars providing training in conducting forensic evaluations, screening examinations of defendants to determine capacity, and preparation of written reports required by law.

Section 10 would direct the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services to adopt guidelines for treatment of individuals who are involuntarily committed following a determination of incapacity 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 individuals capacity to proceed.

EFFECTIVE DATE: 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.