

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 517

Short Title: Capacity to Proceed to Trial.

(Public)

Sponsors: Senator Ezzell.

Referred to: Judiciary I.

March 20, 1989

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A LOCAL FORENSIC EVALUATION SHALL BE MADE OF A DEFENDANT CHARGED WITH A MISDEMEANOR WHOSE CAPACITY TO PROCEED TO TRIAL IS QUESTIONED BEFORE A STATE EVALUATION MAY BE ORDERED.

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 to proceed of a defendant who is charged with a misdemeanor of the defendant to proceed is questioned, the court:

(1) May appoint one or more impartial medical experts-experts, including forensic evaluators approved under rules of the Commission for Mental Health, Mental Retardation and Substance Abuse Services to examine the defendant and return a written report describing the present state of the defendant's mental health. Reports so prepared are admissible at the hearing and the court may call any expert so appointed to testify at the hearing. In addition, any expert so appointed may be called to testify at the hearing by the court at the request of either party-party; and

- 1 (2) If indicated as a result of the findings in subdivision (b)(1), may order
2 ~~May commit~~ the defendant to a State ~~mental health~~ facility for the
3 ~~mentally ill~~ for further observation and treatment for the period
4 necessary to determine the defendant's capacity to proceed. In no event
5 may the period exceed 60 days. The director of the facility must direct
6 his report on defendant's condition to the defense attorney and to the
7 clerk of superior court, who must bring it to the attention of the court.
8 The report is admissible at the hearing.
- 9 a. If the report indicates that the defendant lacks capacity to
10 proceed, proceedings for involuntary civil commitment under
11 Chapter 122C of the General Statutes may be instituted on the
12 basis of the report in either the county where the criminal
13 proceedings are pending or in the county in which the defendant
14 is hospitalized.
- 15 b. If the report indicates that the defendant has capacity to
16 proceed, the clerk must direct the sheriff to return him to the
17 county.
- 18 (3) ~~Must hold a hearing to determine the defendant's capacity to proceed.~~
19 ~~If examination is ordered pursuant to subdivision (1) or (2), the~~
20 ~~hearing must be held after the examination. Reasonable notice must be~~
21 ~~given to the defendant and to the prosecutor and the State and the~~
22 ~~defendant may introduce evidence.~~
- 23 (b1) When the capacity to proceed of a defendant who is charged with a felony is
24 questioned, the court:
- 25 (1) May appoint one or more impartial medical experts, including forensic
26 evaluators approved under rules of the Commission for Mental Health,
27 Mental Retardation and Substance Abuse Services, to examine the
28 defendant and return a written report describing the present state of the
29 defendant's mental health. Reports so prepared are admissible at the
30 hearing and the court may call any expert so appointed to testify at the
31 hearing. In addition, any expert so appointed may be called to testify
32 at the hearing by the court at the request of either party; or
- 33 (2) May order the defendant to a State facility for the mentally ill for
34 observation and treatment for the period necessary to determine the
35 defendant's capacity to proceed. In no event may the period exceed 60
36 days. The director of the facility must direct his report on the
37 defendant's condition to the defense attorney and to the clerk of
38 superior court, who must bring it to the attention of the court. The
39 report is admissible at the hearing.
- 40 a. If the report indicates that the defendant lacks capacity to
41 proceed, proceedings for involuntary civil commitment under
42 Chapter 122C may be instituted on the basis of the report in
43 either the county where the criminal proceedings are pending or
44 in the county in which the defendant is hospitalized.

1 b. If the report indicates that the defendant has the capacity to
2 proceed, the clerk must direct the sheriff to return him to the
3 county.

4 (b2) When the capacity to proceed of any defendant is questioned, the court must
5 hold a hearing to determine the defendant's capacity to proceed. If examination is
6 ordered pursuant to subdivision (b) or (b1), the hearing must be held after the
7 examination. Reasonable notice must be given to the defendant and to the prosecutor
8 and the State and the defendant may introduce evidence.

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

12 (d) Any report made to the court pursuant to this section shall be forwarded to
13 the clerk of superior court in a sealed envelope addressed to the attention of a presiding
14 judge, with a covering statement to the clerk of the fact of the examination of the
15 defendant and any conclusion as to whether the defendant has or lacks capacity to
16 proceed. A copy of the full report must be forwarded to defense counsel, or to the
17 defendant if he is not represented by counsel provided, if the question of the defendant's
18 capacity to proceed is raised at any time, a copy of the full report must be forwarded to
19 the district attorney. Until such report becomes a public record, the full report to the
20 court shall be kept under such conditions as are directed by the court, and its contents
21 shall not be revealed except as directed by the court. Any report made to the court
22 pursuant to this section shall not be a public record unless introduced into evidence.”

23 Sec. 2. This act shall become effective October 1, 1989.