

§ 7B-2401.2. (Effective January 1, 2025) Procedures to determine capacity; hearing procedures; evidence.

(a) The question of capacity of the juvenile to proceed may be raised at any time on motion by the prosecutor, the juvenile, the juvenile's attorney, or the court. The motion shall detail the specific conduct that leads the moving party to question the juvenile's capacity to proceed.

(b) When the capacity of the juvenile to proceed is questioned, the court may appoint one or more forensic evaluators qualified by the Department of Health and Human Services to conduct forensic evaluations for juveniles to examine the juvenile and return a forensic evaluation report. Reports so prepared are admissible at the hearing. The court may call any expert so appointed to testify at the hearing with or without the request of either party. This subsection shall not be construed to limit the juvenile's right to retain his or her own expert or the State's right to obtain its own expert.

(c) At any time in the case of a juvenile that allegedly committed an offense that would be a felony if committed by an adult, the court may order the juvenile to a State facility for the mentally ill for observation and treatment for the period, not to exceed 60 days, necessary to determine the juvenile's capacity to proceed. If a juvenile is ordered to a State facility without first having an examination pursuant to subsection (b) of this section, the judge shall make a finding that an examination pursuant to this subsection would be more appropriate to determine the juvenile's capacity. The Division shall return the juvenile to the county when notified that the evaluation has been completed. The director of the facility shall direct his or her report on the juvenile's condition to the juvenile's attorney and to the clerk of superior court, who shall bring it to the attention of the court. The report is admissible at the hearing.

(d) The forensic evaluation report shall be completed within 30 days of the date the forensic evaluation was ordered, consistent with this section. The court may extend the time for completion of the forensic evaluation for good cause shown. The forensic evaluation report shall be provided to the court as follows:

- (1) The report in a case of a juvenile who is alleged to have committed an offense that would be a misdemeanor if committed by an adult shall be completed and provided to the court no later than 10 days following the completion of the evaluation for a juvenile.
- (2) The report in the case of a juvenile who is alleged to have committed an offense that would be a felony if committed by an adult shall be completed and provided to the court no later than 30 days following the completion of the evaluation.
- (3) In cases where the juvenile challenges the determination made by the court-ordered evaluator and the court orders an independent evaluation, that evaluation and report to the court must be completed within 60 days of the entry of the order by the court.

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

(e) Any report made to the court pursuant to this section shall be forwarded to the clerk of superior court in a sealed envelope addressed to the attention of a presiding judge, with a covering statement to the clerk of the fact of the examination of the juvenile and any conclusion as to whether the juvenile has or lacks capacity to proceed. If the juvenile is being held in the custody of the Division, the clerk shall send a copy of the covering statement to the Division. The Division and any persons employed by the Division shall maintain the copy of the covering statement as a confidential record. A copy of the full report shall be forwarded to the juvenile's counsel. If the

question of the juvenile's capacity to proceed is raised at any time, a copy of the full report must be forwarded to the prosecutor. Until the question of the juvenile's capacity is raised, the full report to the court shall be kept under such conditions as are directed by the court, and its contents shall not be revealed except the report and the relevant confidential information previously ordered released under G.S. 7B-2401.3(c) shall be released to the program where the juvenile is receiving remediation services and as directed by the court. Any report made to the court pursuant to this section shall be maintained as a confidential record.

(f) For any juvenile who is alleged to be delinquent and is less than 12 years of age, the court shall inquire of the prosecutor and the juvenile's attorney regarding the juvenile's capacity to proceed the first time the juvenile appears in court. If the prosecutor or the juvenile's attorney requests additional time to determine whether it is necessary to raise the question of the juvenile's capacity to proceed, the court shall allow the question of capacity to be raised at any time pursuant to subsection (a) of this section.

(g) An order for a forensic evaluation shall stay juvenile proceedings, with the exception of hearings to review the need for continued nonsecure or secure custody and proceedings related to the transfer of jurisdiction by indictment pursuant to G.S. 7B-2200.5(a), until capacity has been determined pursuant to this Subchapter.

(h) When the capacity of the juvenile to proceed is questioned, the court shall hold a hearing to determine the juvenile's capacity to proceed. If an evaluation is ordered pursuant to subsection (b) of this section, the hearing shall be held upon receipt of the forensic evaluation report. The clerk shall provide notice to the juvenile and the prosecutor in accordance with G.S. 7B-1807. The order of the court shall contain findings of fact to support its determination of the juvenile's capacity to proceed. The parties may stipulate that the juvenile is capable to proceed but shall not be allowed to stipulate that the juvenile lacks capacity to proceed. If the court finds the juvenile is capable to proceed, the juvenile proceedings shall no longer be stayed, and the court shall set a date for such further proceedings. If the juvenile's capacity to proceed is contested, the juvenile bears the burden of proving the juvenile is incapable to proceed by a preponderance of the evidence. At a contested hearing, the State and the juvenile may call witnesses and present evidence. Nothing in this subsection may be construed to prohibit the State or the juvenile from calling other expert witnesses to testify at a capacity hearing. If appropriate, the court may order remediation services in accordance with G.S. 7B-2401.4.

(i) A juvenile who has been found incapable to proceed by the court shall not be subject to transfer, adjudication, disposition, or modification of disposition so long as the incapacity exists pursuant to this Article.

(j) If the court orders a forensic evaluation, the court shall order that the evaluation be conducted in the least restrictive environment, considering the best interests of the juvenile and the safety of the public. The forensic evaluation may be conducted in any location in this State. The forensic evaluation may be conducted outside of this State for juveniles in residential facilities on an individual basis as indicated by the order of the court.

(k) The Division shall arrange for the transportation of juveniles who are confined in secure custody to the ordered location of the forensic evaluation. (2023-114, s. 5(b).)