

§ 7B-2401.4. (Effective January 1, 2025) Remediation.

(a) The purpose of remediation ordered pursuant to this section shall be for the juvenile to attain capacity to proceed.

(b) When the court finds the juvenile incapable to proceed, and substantially likely to attain capacity in the foreseeable future, the court may order remediation services. The remediation services shall be based on the recommendations from the forensic evaluation.

(c) Remediation services shall be provided in the least restrictive environment considering the best interests of the juvenile and the safety of the public. In addition, the court shall consider the following when determining where services may be rendered:

- (1) Whether there is probable cause to believe the allegations in the petition are true.
- (2) The nature of the incapacity.
- (3) The juvenile's age or developmental maturity.
- (4) The nature of the act alleged to have been committed and the seriousness of the offense.
- (5) The availability and appropriateness of programming in the juvenile's community.
- (6) Supervision needs and level of available community supervision or alternatives such as family members, custodians, guardians, and community-based programs.
- (7) Any prior treatment or interventions provided to the juvenile.
- (8) Any other relevant factors not previously specified.

(d) When the juvenile is found incapable to proceed based on mental disorder, intellectual disability, neurological disorder, or traumatic or acquired brain injury but substantially likely to attain capacity, and the court finds that all available less restrictive alternatives are inappropriate, the court may enter an order in accordance with G.S. 7B-2401.5 for the juvenile to be assessed for an involuntary commitment pursuant to Chapter 122C of the General Statutes.

(e) An order for remediation services shall contain all of the following:

- (1) Written findings of fact regarding the least restrictive environment for the remediation services.
- (2) If the court order allows for secure confinement pursuant to subsection (d) of this section, the maximum time for placement in a secure facility shall be pursuant to subsection (f) of this section.

(f) If the court finds that the juvenile is incapable of proceeding and substantially likely to attain capacity in the foreseeable future, the court shall enforce the following time limitations on remediation services. In the case of a probation violation, the underlying offense shall serve as the most serious offense as used in this section:

- (1) If the most serious offense alleged in the petition is first degree murder (G.S. 14-17), first-degree forcible rape (G.S. 14-27.21), first-degree statutory rape (G.S. 14-27.24), first-degree forcible sexual offense (G.S. 14-27.26), or first-degree statutory sexual offense (G.S. 14-27.29) if committed by an adult, remediation shall not exceed 36 months beyond the original finding of incapacity to proceed or the maximum jurisdiction of the court as provided in G.S. 7B-1601, whichever occurs sooner.
- (2) If the most serious offense alleged in the petition is a Class B1, B2, C, D, or E felony if committed by an adult, other than an offense set forth in subdivision (1) of this subsection, remediation shall not exceed 12 months beyond the original finding of incapacity to proceed, or the maximum jurisdiction of the court as provided in G.S. 7B-1601, whichever occurs sooner. The court for good cause may grant an extension of up to 12 months for remediation. If an

extension is granted, remediation shall not exceed 24 months beyond the original finding of incapacity to proceed, or the maximum jurisdiction of the court as provided in G.S. 7B-1601, whichever occurs sooner.

- (3) If the most serious offense alleged in the petition is a Class F, G, H, or I felony or any misdemeanor if committed by an adult, remediation shall not exceed six months beyond the original finding of incapacity to proceed, or the maximum jurisdiction of the court as provided in G.S. 7B-1601, whichever occurs sooner. The court may grant an extension of up to six months for remediation. If an extension is granted, remediation shall not exceed 12 months beyond the original finding of incapacity to proceed, or the maximum jurisdiction of the court as provided in G.S. 7B-1601, whichever occurs sooner.

- (4) In no case shall the court grant extensions of time for the remediation services beyond the maximum jurisdiction of the court as provided in G.S. 7B-1601.

(g) The Division shall be responsible for the provision of psychoeducation remediation programming and working with community partners to secure any additional services recommended in the forensic evaluation report. The Division is authorized to contract with the University of North Carolina at Chapel Hill or any other qualified educational organization to develop and conduct related trainings and curriculum.

The remediation service provider shall provide reports to the court at least every 90 days. Any report made to the court pursuant to this subsection shall be forwarded to the clerk of superior court addressed to the attention of the presiding judge. A report provided under this subsection shall include all of the following:

- (1) The dates of any services provided to the juvenile.
- (2) A summary of the juvenile's attendance and participation.
- (3) Information about the juvenile's progress in the areas that were found to be relevant to the juvenile's incapacity, including education regarding court procedures and stabilization or improvement of symptoms leading to functional impairments.

No statement or disclosure made by the juvenile during the remediation services regarding the juvenile's responsibility for a criminal act that can result either in an adjudication of delinquency or transfer of a matter to superior court for trial as an adult is admissible in any juvenile or criminal proceeding against the juvenile or defendant. All remediation progress reports, summaries, and notes shall not include any such statement.

The court shall hold a hearing within 30 days of receipt of the remediation progress report to review the remediation services. The remediation review hearing may be informal, and the court may consider all remediation progress reports. The court may consider any evidence, including hearsay evidence as defined in G.S. 8C-1, Rule 801, that the court finds to be relevant, reliable, and necessary to determine if remediation services should continue or reassessment of capacity is warranted. The juvenile and the juvenile's parent, guardian, or custodian shall have an opportunity to present evidence, and they may advise the court concerning the remediation services. The order of the court may be amended or supplemented only as provided in this Subchapter and only after notice and a hearing.

(h) If the court determines that reassessment of capacity is warranted, the court shall order a new forensic evaluation. This forensic evaluation shall be performed by the original forensic evaluator when possible and comply with the requirements of G.S. 7B-2401.3. Any initial forensic evaluation or reevaluation shall be conducted independently of the remediation services and shall not be conducted by the remediation specialist for the juvenile.

(i) If, at any time during the remediation treatment, the remediation service provider finds that the juvenile has likely completed the requirements of the remediation services, the

remediation service provider shall provide written notification to the court, the prosecutor, and the juvenile's attorney within two business days regarding this finding. A copy of any remediation report or reports shall be forwarded to the court and to the juvenile's attorney. The court may order the release of a remediation report to the prosecutor after providing the juvenile with reasonable notice and an opportunity to be heard and then determining that the information is relevant and necessary to the hearing of the matter before the court and unavailable from any other source. This subsection shall not be construed to relieve any court of its duty to conduct hearings and make findings required under relevant federal law before ordering the release of any private medical or mental health information or records related to substance abuse or HIV status or treatment. The records shall be withheld from public inspection and, except as provided in this subsection, may be examined only by order of the court. The juvenile's matter shall be returned to court within a reasonable time, and not more than 30 days after the completion of remediation services, for review or further proceedings. (2023-114, s. 5(b).)