

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 517  
Judiciary I Committee Substitute Adopted 4/20/89

Short Title: Capacity to Proceed to Trial.

(Public)

Sponsors:

Referred to:

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 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 subdivisions (1) or (2) below, 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. ~~When the capacity of the defendant to proceed is questioned, the~~ 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

1 present state of the defendant's mental health. ~~Reports~~; reports so  
2 prepared are admissible at the hearing and the court may call any  
3 expert so appointed to testify at the hearing. ~~In addition~~; any expert so  
4 appointed may be called to testify at the hearing by the court at the  
5 request of either party; or

- 6 (2) In the case of a defendant charged with a misdemeanor only after the  
7 examination pursuant to subsection (b)(1) of this section or at any time  
8 in the case of a defendant charged with a felony, May commit ~~may~~  
9 order the defendant to a State mental health facility for the mentally ill  
10 for observation and treatment for the period, not to exceed 60 days,  
11 necessary to determine the defendant's capacity to proceed. In no event  
12 may the period exceed 60 days. The; the director of the facility ~~must~~ shall  
13 direct his report on defendant's condition to the defense attorney and to  
14 the clerk of superior court, who must ~~shall~~ bring it to the attention of  
15 the court. The; the report is admissible at the hearing; if the report  
16 indicates that the defendant has capacity to proceed, the clerk shall  
17 direct the sheriff to return him to the county.

18 (b1) If the report pursuant to subdivisions (1) or (2) of subsection (b) of this  
19 section indicates that the defendant lacks capacity to proceed, proceedings for  
20 involuntary civil commitment under Chapter 122C of the General Statutes may be  
21 instituted on the basis of the report in either the county where the criminal proceedings  
22 are pending or, if the defendant is hospitalized, in the county in which the defendant is  
23 hospitalized.

- 24 a. ~~If the report indicates that the defendant lacks capacity to~~  
25 ~~proceed, proceedings for involuntary civil commitment under~~  
26 ~~Chapter 122C of the General Statutes may be instituted on the~~  
27 ~~basis of the report in either the county where the criminal~~  
28 ~~proceedings are pending or in the county in which the defendant~~  
29 ~~is hospitalized.~~  
30 b. ~~If the report indicates that the defendant has capacity to~~  
31 ~~proceed, the clerk must direct the sheriff to return him to the~~  
32 ~~county.~~

- 33 (3) ~~Must hold a hearing to determine the defendant's capacity to proceed.~~  
34 ~~If examination is ordered pursuant to subdivision (1) or (2), the~~  
35 ~~hearing must be held after the examination. Reasonable notice must be~~  
36 ~~given to the defendant and to the prosecutor and the State and the~~  
37 ~~defendant may introduce evidence.~~

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

41 (d) Any report made to the court pursuant to this section shall be forwarded to  
42 the clerk of superior court in a sealed envelope addressed to the attention of a presiding  
43 judge, with a covering statement to the clerk of the fact of the examination of the  
44 defendant and any conclusion as to whether the defendant has or lacks capacity to

1 proceed. A copy of the full report ~~must~~shall be forwarded to defense counsel, or to the  
2 defendant if he is not represented by counsel provided, if the question of the defendant's  
3 capacity to proceed is raised at any time, a copy of the full report must be forwarded to  
4 the district attorney. Until such report becomes a public record, the full report to the  
5 court shall be kept under such conditions as are directed by the court, and its contents  
6 shall not be revealed except as directed by the court. Any report made to the court  
7 pursuant to this section shall not be a public record unless introduced into evidence.”

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