

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

S

3

SENATE BILL 517  
Judiciary I Committee Substitute Adopted 4/20/89  
House Committee Substitute Favorable 6/7/89

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 AND TO MODIFY THE DEFINITION OF PERSONS DANGEROUS TO THEMSELVES OR OTHERS CONTAINED IN CHAPTER 122C OF THE GENERAL STATUTES.

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           (1)    May appoint one or more impartial medical ~~experts~~experts, including  
2            forensic evaluators approved under rules of the Commission for  
3            Mental Health, Mental Retardation, and Substance Abuse Services, to  
4            examine the defendant and return a written report describing the  
5            present state of the defendant's mental health. ~~Reports;~~reports so  
6            prepared are admissible at the hearing and the court may call any  
7            expert so appointed to testify at the hearing. ~~In addition;~~ any expert so  
8            appointed may be called to testify at the hearing by the court at the  
9            request of either party; ~~or~~  
10          (2)    In the case of a defendant charged with a misdemeanor only after the  
11          examination pursuant to subsection (b)(1) of this section or at any time  
12          in the case of a defendant charged with a felony, May ~~commit~~ may  
13          order the defendant to a State ~~mental health~~ facility for the mentally ill  
14          for observation and treatment for the period, not to exceed 60 days,  
15          necessary to determine the defendant's capacity to proceed. ~~In no event~~  
16          ~~may the period exceed 60 days. The;~~ the director of the facility must shall  
17          direct his report on defendant's condition to the defense attorney and to  
18          the clerk of superior court, who ~~must~~ shall bring it to the attention of  
19          the court. ~~The;~~ the report is admissible at the hearing; if the report  
20          indicates that the defendant has capacity to proceed, the clerk shall  
21          direct the sheriff to return him to the county.  
22          (b1) If the report pursuant to subdivisions (1) or (2) of subsection (b) of this  
23          section indicates that the defendant lacks capacity to proceed, proceedings for  
24          involuntary civil commitment under Chapter 122C of the General Statutes may be  
25          instituted on the basis of the report in either the county where the criminal proceedings  
26          are pending or, if the defendant is hospitalized, in the county in which the defendant is  
27          hospitalized.  
28                  a. ~~If the report indicates that the defendant lacks capacity to~~  
29                  ~~proceed, proceedings for involuntary civil commitment under~~  
30                  ~~Chapter 122C of the General Statutes may be instituted on the~~  
31                  ~~basis of the report in either the county where the criminal~~  
32                  ~~proceedings are pending or in the county in which the defendant~~  
33                  ~~is hospitalized.~~  
34                  b. ~~If the report indicates that the defendant has capacity to~~  
35                  ~~proceed, the clerk must direct the sheriff to return him to the~~  
36                  ~~county.~~  
37          (3)    ~~Must hold a hearing to determine the defendant's capacity to proceed.~~  
38                  ~~If examination is ordered pursuant to subdivision (1) or (2), the~~  
39                  ~~hearing must be held after the examination. Reasonable notice must be~~  
40                  ~~given to the defendant and to the prosecutor and the State and the~~  
41                  ~~defendant may introduce evidence.~~  
42          (c)    The court may make appropriate temporary orders for the confinement or  
43          security of the defendant pending the hearing or ruling of the court on the question of  
44          the capacity of the defendant to proceed.

1 (d) Any report made to the court pursuant to this section shall be forwarded to  
 2 the clerk of superior court in a sealed envelope addressed to the attention of a presiding  
 3 judge, with a covering statement to the clerk of the fact of the examination of the  
 4 defendant and any conclusion as to whether the defendant has or lacks capacity to  
 5 proceed. A copy of the full report ~~must~~shall be forwarded to defense counsel, or to the  
 6 defendant if he is not represented by counsel provided, if the question of the defendant's  
 7 capacity to proceed is raised at any time, a copy of the full report must be forwarded to  
 8 the district attorney. Until such report becomes a public record, the full report to the  
 9 court shall be kept under such conditions as are directed by the court, and its contents  
 10 shall not be revealed except as directed by the court. Any report made to the court  
 11 pursuant to this section shall not be a public record unless introduced into evidence."

12 Sec. 2. G.S. 122C-3(11) reads as rewritten:

13 "(11) 'Dangerous to himself or others' means:

14 a. 'Dangerous to himself' means that within the ~~recent~~relevant past:

15 1. The individual has acted in such a way as to show:

16 I. That he would be unable, without care, supervision, and  
 17 the continued assistance of others not otherwise  
 18 available, to exercise self-control, judgment, and  
 19 discretion in the conduct of his daily responsibilities and  
 20 social relations, or to satisfy his need for nourishment,  
 21 personal or medical care, shelter, or self-protection and  
 22 safety; and

23 II. That there is a reasonable probability of his suffering  
 24 serious physical debilitation within the near future unless  
 25 adequate treatment is given pursuant to this Chapter. A  
 26 showing of behavior that is grossly irrational, of actions  
 27 that the individual is unable to control, of behavior that is  
 28 grossly inappropriate to the situation, or of other  
 29 evidence of severely impaired insight and judgment shall  
 30 create a **prima facie** inference that the individual is  
 31 unable to care for himself; or

32 2. The individual has attempted suicide or threatened suicide and  
 33 that there is a reasonable probability of suicide unless adequate  
 34 treatment is given pursuant to this Chapter; or

35 3. The individual has mutilated himself or attempted to mutilate  
 36 himself and that there is a reasonable probability of serious self-  
 37 mutilation unless adequate treatment is given pursuant to this  
 38 Chapter.

39 Previous episodes of dangerousness to self, when applicable, may be  
 40 considered when determining reasonable probability of physical  
 41 debilitation, suicide, or self-mutilation.

42 b. 'Dangerous to others' means that within the ~~recent~~relevant past, the  
 43 individual has inflicted or attempted to inflict or threatened to inflict  
 44 serious bodily harm on another, or has acted in such a way as to create

1 a substantial risk of serious bodily harm to another, or has engaged in  
2 extreme destruction of property; and that there is a reasonable  
3 probability that this conduct will be repeated. Previous episodes of  
4 dangerousness to others, when applicable, may be considered when  
5 determining reasonable probability of future dangerous conduct.  
6 Clear, cogent, and convincing evidence that an individual has  
7 committed a homicide in the relevant past is **prima facie** evidence of  
8 dangerousness to others."

9 Sec. 3. Section 1 of this act shall become effective October 1, 1989. Section  
10 2 of this act is effective upon ratification.