

Incapacity and NGRI issues in NC

Fall '05 Public Defender Seminar

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Pretrial Forensic Evaluations

- Motions for Evaluations can come from Defense, DA, or Court
- Community Screeners
- Evaluation at Dorothea Dix Hosp.
 - ◆ Inpatient
 - ◆ Outpatient

Community Forensic Screening

- All misdemeanors
- Most felonies
- **3 Decisions**
 - ◆ **Capable to proceed**-*defendant goes to court*
 - ◆ **Incapable to proceed**-*defendant goes to hospital for treatment*
 - ◆ **Don't know**-*defendant goes to Dix for evaluation*

Incapable to Proceed (HB-95) [GS 15a-1003]

- Original basis for commitment is incapacity to proceed on a charge of a violent offense
- Ongoing commitment criteria is different--Mental Illness and Dangerousness
- Commitment is for treatment
 - ◆ expectation of improvement
 - ◆ not a long-term disposition

Discharge from HB-95

- Two basic routes
 - ◆ 1. Restore capacity to proceed (no longer mentally ill)
 - ◆ 2. No longer dangerous

When capacity is restored

- Hearing is held. With a finding of capacity, criminal case can proceed to plea, trial, etc.
- Sometimes hard to convince the DA to proceed (musty evidence, scattered witnesses, etc.)
- Often hard to convince Defense Attorney
 - ◆ not in client's best interests
 - ◆ Defense attorney no longer assigned to case

Discharges as Not Dangerous

- Doesn't meet commitment criteria- must be D/Ced from hospital
- Capacity status is irrelevant
- Most go to jail, but remain incapable to proceed
- Some get bonded out of jail

NGRI Issues [GS 15a-1321]

- Difference between NGRI and Incapable to Proceed
- NGRI is a long-term commitment
 - ◆ difficult to discharge
 - ◆ could be longer than maximum sentence for underlying offense
- Lack of Conditional Release