



SENATE BILL 388: Incapacity to Proceed.

2017-2018 General Assembly

Committee:		Date:	August 29, 2017
Introduced by:		Prepared by:	Jennifer H. Bedford
Analysis of:	S.L. 2017-147		Staff Attorney

OVERVIEW: *S.L. 2017-147 requires reports ordered by courts of a criminal defendant's capacity to proceed to be released to clinicians at the program where the defendant is receiving capacity restoration and to clinicians designated by the Secretary of Health and Human Services; and creates a workgroup to evaluate the process and impact of capacity determination. This act became effective July 20, 2017.*

CURRENT LAW: The question of a criminal defendant's capacity to proceed may be raised at any time on motion of the prosecutor, defendant, defense counsel, or the court. In the event the issue is raised, the court must hold a hearing to determine the defendant's capacity to proceed and the court may appoint one or more impartial medical experts or a State facility to examine the defendant and generate a report that is admissible at the hearing. After providing the defendant with reasonable notice and an opportunity to be heard, the judge must order the release of relevant confidential information to the examiner including the warrant or indictment, criminal record, jail records, any prior medical, mental health, and school records of the defendant after determining that the information is relevant and necessary to the hearing of the matter before the court and unavailable from any other source.

Any report made to the court must be forwarded to the clerk of superior court in a sealed envelope to the attention of a presiding judge and a covering statement to the clerk of the fact of the examination of the defendant and any conclusion as to whether or not the defendant has capacity to proceed. If the defendant is being held in the custody of the sheriff, the clerk must send a copy of the covering statement to the sheriff, who must maintain the covering statement as a confidential record. A copy of the full report must be sent to the defendant or his counsel, and if the question of the defendant's capacity to proceed is raised at any time, the full report must be forwarded to the district attorney. The contents of the full report must be kept under such conditions as directed by the court and may not be revealed except as directed by the court. The report is not a public record unless introduced into evidence.

BILL ANALYSIS: This act requires the report and relevant confidential information the judge ordered released to the examiner in the preparation of the report to be released to: clinicians at the program where the defendant is receiving capacity restoration; and to clinicians designated by the Secretary of Health and Human Services.

This act also creates a workgroup of stakeholders to evaluate the process and impact of the lacks capacity to proceed determination.

EFFECTIVE DATE: This act became effective July 20, 2017.

Karen Cochrane-Brown
Director



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Legislative Analysis
Division
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