

DELINQUENCY LAW UPDATE

NC Association of District Court Judges

2024 Summer Conference

June 20, 2024



- Case Law
 - Communicating a threat to commit mass violence on educational property
 - Continuing disposition
 - Fatal defect in petition

- Statutory changes
 - Juvenile capacity

- Change to felony exclusion from school athletics





CASE LAW

In re D.R.F., Jr.:

**Communicating
Threat to Commit
Mass Violence on
Educational Property**

Daniel said “he
was going to shoot
up the school”



Protected Speech or True Threat?

We the People

of the United States, in order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common Defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Article 1.

Section 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and including Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall be Law direct. The Number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative; and until such Enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When Vacancies happen in the Representation from any of the foregoing States, the Electors in such State shall chuse a new Representative.

Section 3. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years, and each Senator shall have one Vote.

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Clases. The Seats of the Senators of the first Class shall be vacated at the Expiration of their second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Term of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of Honor, Trust or Profit under the United States; but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

Section 4. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

Section 5. Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from Day to Day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties, as each House may provide.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any Question shall, if desired by one fifth of those Present, be entered on the Journal.

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three Days, nor to any other Place than that in which the two Houses shall be sitting.

Section 6. The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall, in all Cases, be privileged from Arrest during their Attendance at the Session of either House, or in going to or coming from the same; but this Privilege shall not extend to Members of the House of Representatives.

True Threat

State v. Taylor, 379 N.C. 589 (2021)

- Objectively threatening statement
- Made by person with subjective intent to threaten a listener or identifiable group

Counterman v. Colorado, 600 U.S. 66 (2023)

- Must have proof of some subjective understanding of threatening nature of statement
- Mental state of recklessness is sufficient (conscious disregard of a substantial risk that communications would be viewed as threatening violence)

True Threat Considerations

- (1) the context in which the statement was made
- (2) the nature of the language used
- (3) the reaction of the listeners upon hearing the statement

True Threat Analysis

Objectively threatening

- Three student witnesses took statement seriously and were scared
- Daniel's tone was serious
- No one laughed in response; response was an offer to bring the guns



True Threat Analysis

Subjective understanding

- Made statement to group of 15-17 students during school hours
- Statement was in a serious tone that could be overheard by two students
- Daniel made previous text threat against one of these students and made a video about blowing the student's brains out



A photograph of a prison cell. The walls are made of grey cinder blocks. In the center, there is a raised platform serving as a bed, covered with a grey mattress. On the bed, there is a grey and white striped pillow, an orange blanket, and a blue cloth. To the left of the bed is a small black table. At the top center, there is a window with vertical metal bars. In the bottom right corner, a toilet is visible, partially obscured by a black trash can with a yellow stripe.

IN RE D.R.F., JR.:

**— CONTINUING DISPOSITION FOR
TIME IN SECURE CUSTODY**

G.S. 7B-2406 Continuances



For good cause to

receive additional evidence, reports, or assessments that the court has requested, or other information needed in the best interests of the juvenile, or

allow for a reasonable time for the parties to conduct expeditious discovery



Extraordinary circumstances

when necessary for the proper administration of justice, or

in the best interests of the juvenile

“He has been adjudicated delinquent on three prior communicating threats. One being another count of disorderly conduct at school. He was on probation for communicating threats when this happened. Obviously, if it was alluded to, I didn’t want to allude to it since we are now in a disposition or prior to disposition. Obviously, if there is any time to take this serious it is now. Unlike other ones, there is no history, but this there is history. I will show you the proof. He is a level II with four points. I will show you the approved complaints. Again, this is a pattern of conduct that needs to be stipend [sic], so I will ask Your Honor to waive disposition for seven days in order for the juvenile to be held in secure custody.”



**IN RE D.J.Y.
BLANK COURT COUNSELOR DECISION
BOX ON PETITION**

15-DAY EXTENSION OF TIME TO FILE PETITION

Pursuant to G.S. 7B-1703, at the discretion of the undersigned chief court counselor, the time to file a petition in the above captioned case is extended 15 days.

<i>Date</i>	<i>Name Of Chief Court Counselor</i>	<i>Signature Of Chief Court Counselor</i>

DECISION OF COURT COUNSELOR REGARDING THE FILING OF THE PETITION

- 1. Approved for Filing
- 2. Not Approved for Filing
 - a. Closed
 - b. Diverted and Retained

<i>Date</i>	<i>Time</i>	<input type="checkbox"/> AM <input type="checkbox"/> PM

<i>Name Of Court Counselor Giving Telephonic Approval</i>

<i>Name And Title Of Person Receiving Telephonic Approval</i>

<i>Date</i>	<i>Signature Of Court Counselor</i>	<i>Signature Of Person Receiving Telephonic Approval</i>

Post Diversion Approval For Filing Of Petition

Absence of Signature Not Cured by:

- JCC signature in verification section of petition
- Completion of YASI and gang assessment and provision of predisposition report



A row of law books on a shelf, with the text "STATUTORY CHANGES" overlaid in large white letters. The books are bound in dark red leather with black labels that read "LAW REPORTS" and have numbers like 173, 174, 175, and 176. The background is a blurred library shelf.

— STATUTORY CHANGES

Capacity to Proceed

S.L. 2023-114

(effective 1/1/25)

Unable to:

Understand nature and object of proceedings

Comprehend own situation in reference to proceedings, or

Assist in defense in rational or reasonable manner



BECAUSE OF:

mental disorder,

intellectual disability,

neurological disorder,

traumatic or acquired brain injury, or

developmental immaturity.

Developmental immaturity = “[i]ncomplete development or delay associated with chronological age, which manifests as a functional limitation in one or more domains, including cognitive, emotional, and social development.”

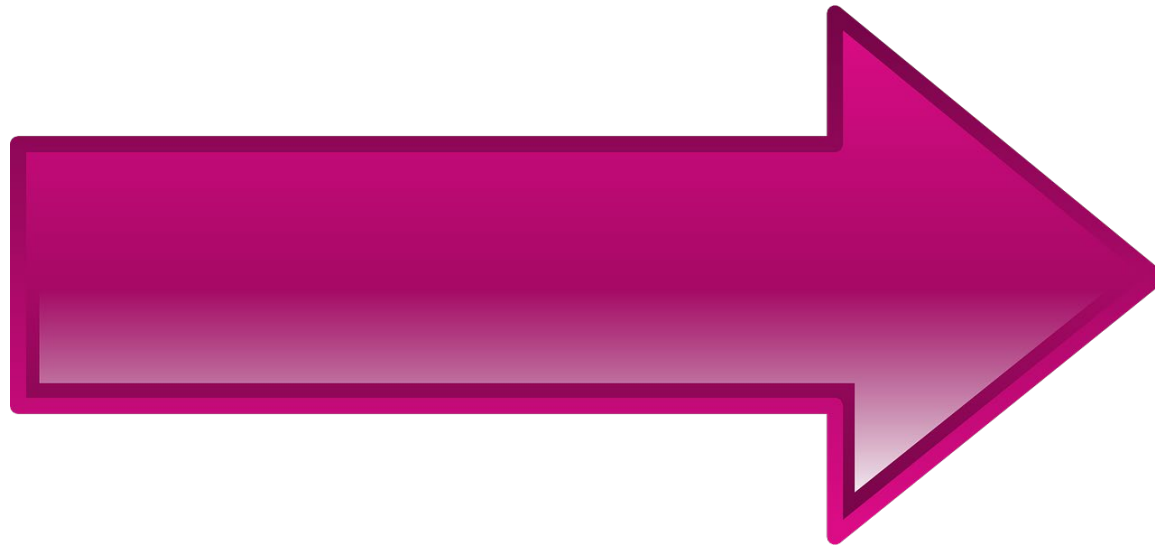
If No Capacity to Proceed, NO

discretionary
transfer

adjudication

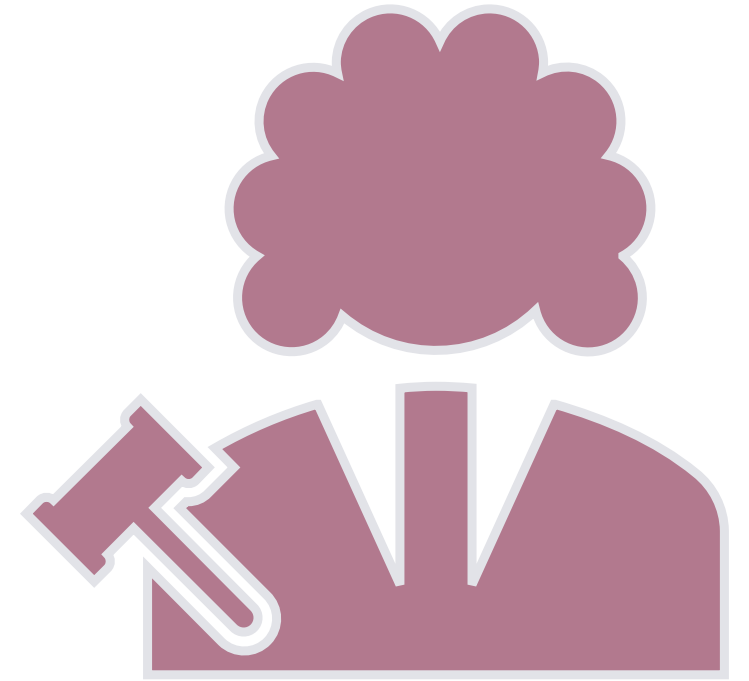
disposition
(including a
violation of
probation)

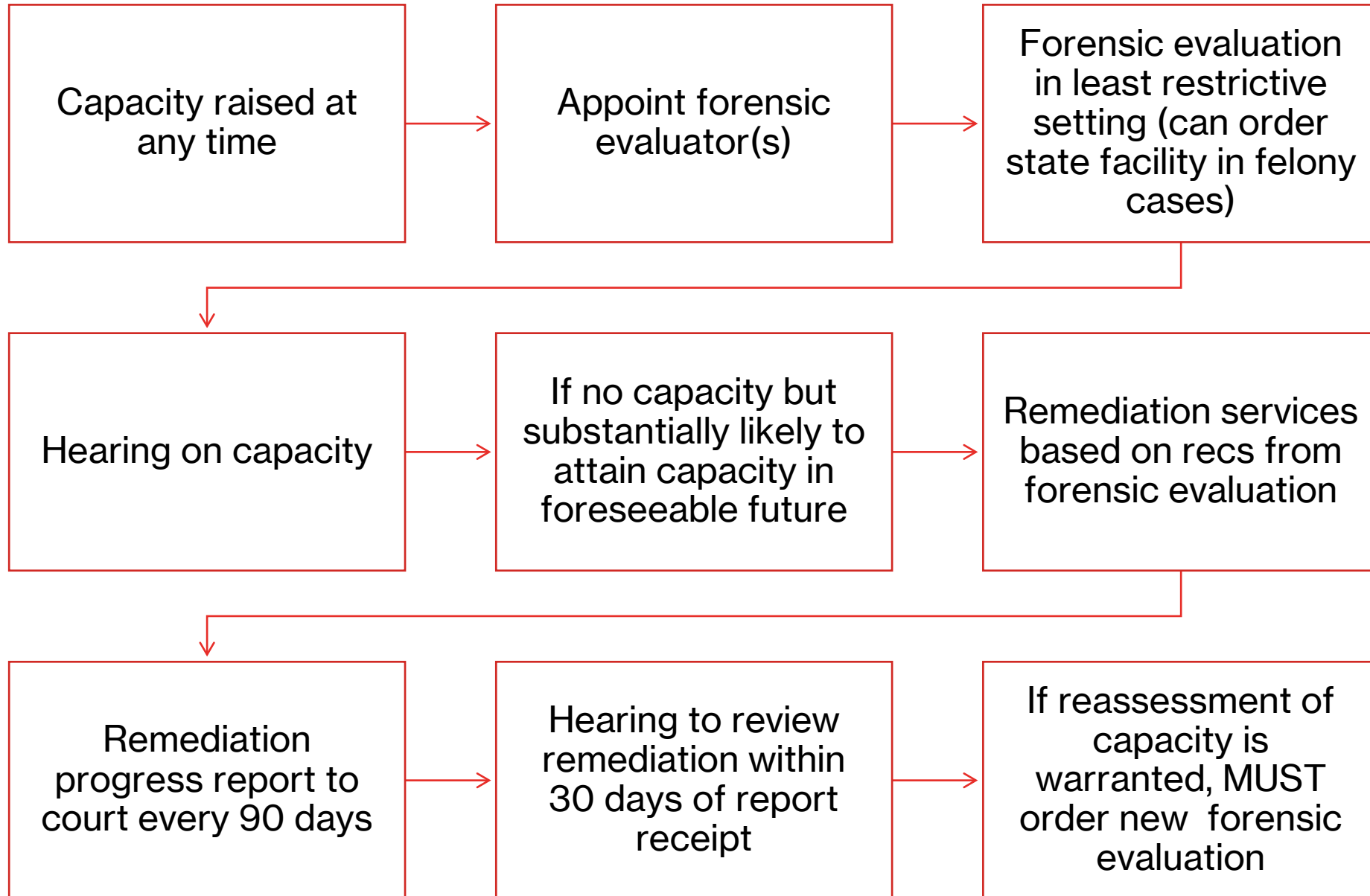
Capacity cannot be raised in
mandatory transfer cases until
AFTER transfer



Mandate for Judicial Inquiry Regarding Capacity to Proceed

- ✓ In every case in which the juvenile is younger than 12
- ✓ First time the juvenile appears in court





Juvenile Forensic Evaluators

DHHS charged with setting new standards

Current evaluators grandfathered in; will have 12 months to satisfy new standards



Forensic Evaluation Must Include

Capacity to

Appreciate allegations

Appreciate range and nature of allowable dispositions

Understand participant roles and adversarial nature of process

Disclose pertinent facts to counsel

Display appropriate courtroom behavior

Testify regarding relevant issues

Make reasonable and rational decisions

Assist in defense in rational manner

Any other factors evaluator deems relevant

Forensic Evaluation Must Include

Whether capable,
incapable, or incapable
with ability to attain
capacity in foreseeable
future with remediation

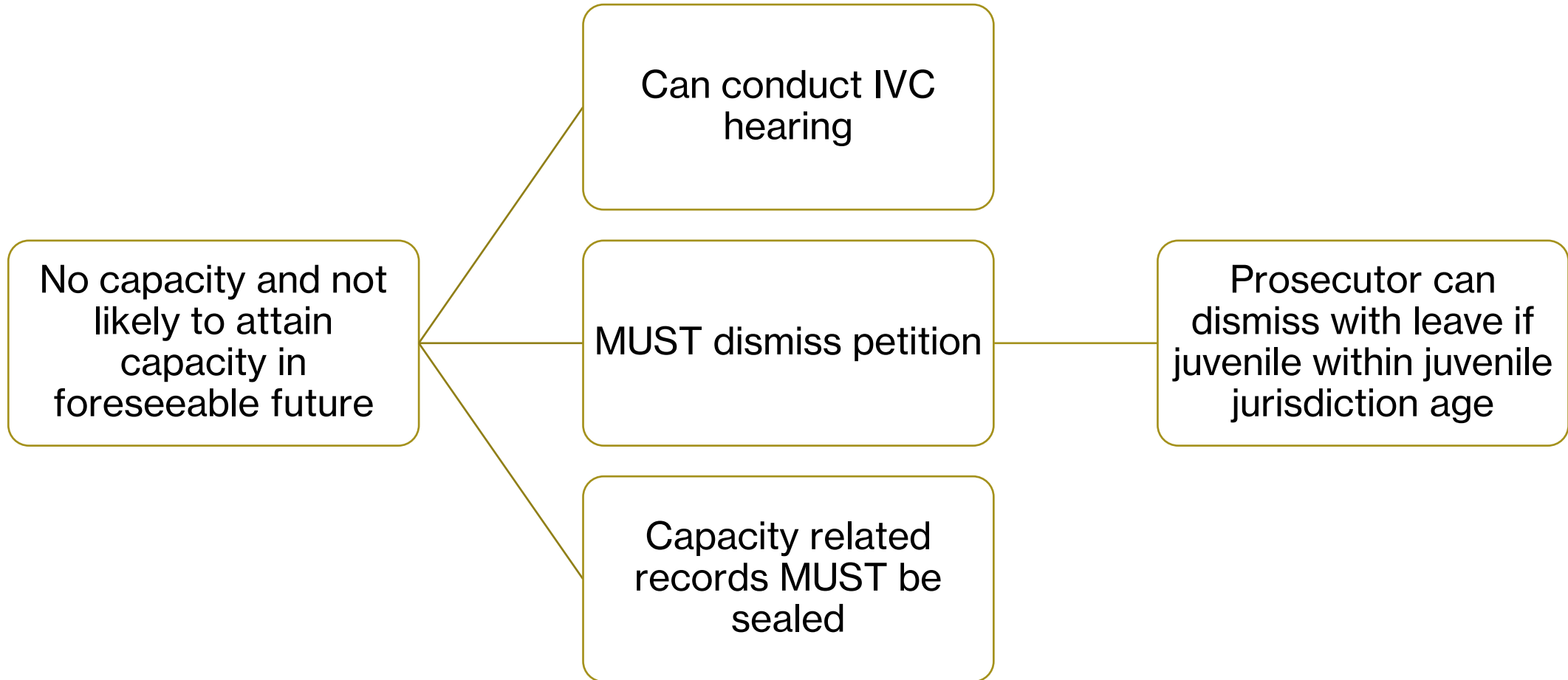
Basis of incapacity

Remediation

“[s]ervices directed only at facilitating the attainment of capacity to proceed for a juvenile who the court finds is incapable to proceed. Such term may include mental health treatment to reduce interfering symptoms, specialized psychoeducational programming, or a combination of these interventions.”

REMEDIATION TIME LIMITS

Most serious offense alleged	Remediation time limit
First-degree murder, forcible rape, statutory rape, forcible sexual offense, or statutory sexual offense	The sooner of 36 months from the finding of incapacity or the maximum jurisdiction of the juvenile court
Any other Class B1 – E felony	The sooner of 12 months from the finding of incapacity or the maximum jurisdiction of the juvenile court. An extension of 12 months can be granted for good cause. Remediation can never extend beyond the sooner of 24 months from the finding of incapacity or the maximum jurisdiction of the juvenile court.
Class F – I felony or misdemeanor	The sooner of 6 months from the finding of incapacity or the maximum jurisdiction of the juvenile court. An extension of 6 months can be granted. Remediation can never extend beyond the sooner of 12 months from the finding of incapacity or the maximum jurisdiction of the juvenile court.



November 21, 2024

Class on Juvenile
Capacity

