

**CHAPTER 12.1-04**  
**JUVENILES - INTOXICATION - DEFENSES**

**12.1-04-01. Juveniles.**

Persons under the age of seven years are deemed incapable of commission of an offense defined by the constitution or statutes of this state. The prosecution of any person as an adult is barred if the offense was committed while the person was less than fourteen years of age.

**12.1-04-02. Intoxication.**

1. Intoxication is not a defense to a criminal charge. Intoxication does not, in itself, constitute mental disease or defect within the meaning of section 12.1-04-04. Evidence of intoxication is admissible whenever it is relevant to negate or to establish an element of the offense charged.
2. A person is reckless with respect to an element of an offense even though his disregard thereof is not conscious, if his not being conscious thereof is due to self-induced intoxication.

**12.1-04-03. Lack of criminal responsibility a defense.**

Repealed by S.L. 1985, ch. 173, § 29.

**12.1-04-04. Disposition of mentally unfit defendants.**

No person who, as a result of mental disease or defect, lacks capacity to understand the proceedings against the person or to assist in the person's own defense shall be tried, convicted, or sentenced for the commission of an offense so long as such incapacity endures.

**12.1-04-05. Notice of defense, filing.**

Superseded by N.D.R.Crim.P., Rule 12.2.

**12.1-04-06. Examination - Temporary commitment.**

Whenever there is reason to doubt the defendant's fitness to proceed, the court may order the detention of the defendant for the purpose of an examination by a psychiatrist or a licensed psychologist. The detention must be in the least restrictive appropriate setting, including the state hospital, the life skills and transition center, or other suitable facility for a reasonable period, not to exceed thirty days, for such examination. In lieu of detention, the court may allow the defendant to remain in the defendant's present residential setting or other suitable residential setting for the purpose of evaluation by a suitable facility or personnel, subject to any reasonable limitation the court may impose. A human service center may not be considered a suitable facility and may not be considered suitable personnel under this section unless the court is aware that an inquiry has been made prior to the court ordering the evaluation to ensure that appropriate resources exist at the human service center being ordered to conduct the evaluation. The court, by subsequent order and for good cause shown, may extend the detention for a period not to exceed thirty additional days. While the defendant is detained, the defendant's legal counsel, family, and others necessary to assist in the defendant's case shall have reasonable opportunity to examine and confer with the defendant.

**12.1-04-07. Report - Hearing when contested.**

1. The report of the examining psychiatrists or psychologists must be given in writing to the court within three days of expiration of the period of commitment or, if the defendant is not committed, within thirty days after the outpatient evaluation. The court shall cause copies to be delivered to the prosecutor and counsel for the defendant.
2. The report must include:
  - a. The identity of the individuals interviewed and records and other information considered.
  - b. Procedures, tests, and techniques utilized in the assessment.

- c. The date and time of the examination of the defendant, and the identity of each individual present during the examination.
  - d. The relevant information obtained, other information not obtained which the examiner believes may be relevant, and the findings made.
  - e. An opinion as to whether the defendant is fit to proceed or is unable to effectively communicate with counsel and whether the defendant will attain fitness to proceed or ability to effectively communicate with counsel in the foreseeable future.
3. If the findings of the report are contested, the court shall hold a hearing prior to deciding whether the defendant currently lacks fitness to proceed or currently lacks ability to effectively communicate with counsel and whether the defendant will attain fitness to proceed or ability to effectively communicate with counsel in the foreseeable future. Upon hearing, the prosecution and defense have the right to summon and cross-examine the persons responsible for the report and to offer evidence upon the issues.

**12.1-04-08. Suspension or dismissal of proceedings - Referral for services.**

1. If the court determines based upon a preponderance of the evidence that the defendant currently lacks fitness to proceed or to effectively communicate with counsel but that the defendant may attain fitness to proceed or effectively communicate with counsel in the foreseeable future, the proceedings against the defendant must be suspended, except as provided in section 12.1-04-09. When the court determines, after a hearing if a hearing is requested, that the defendant has regained fitness to proceed or to effectively communicate with counsel, the proceeding must be resumed. If prosecution of the defendant has not resumed prior to the expiration of the maximum period for which the defendant could be sentenced, or it is determined by the court, after a hearing if a hearing is requested, that the defendant will not regain fitness to proceed or to effectively communicate with counsel, the charges against the defendant must be dismissed. The court may at any time make a referral for other appropriate services, treatment, or civil commitment.
2. If the court determines based upon a preponderance of the evidence that the defendant currently lacks fitness to proceed and that the defendant will not attain fitness to proceed in the foreseeable future, the proceedings must be dismissed. The court may at any time make a referral for other appropriate services, treatment, or civil commitment.
3. Other appropriate services or treatment include:
  - a. Determination of incapacity, by a district court with appropriate jurisdiction following petition by the state's attorney, for the appointment of a guardian or conservator pursuant to chapter 30.1-28 or 30.1-29;
  - b. Civil commitment of the person pursuant to chapter 25-03.1; or
  - c. Treatment of the person by a human service center or other appropriate public or private provider.
4. The custodian, guardian, or other person charged with the control of the defendant may take an appeal from the court's order in the manner provided by law. The procedure provided in this section is not exclusive, but is in addition to any other procedure for the commitment of individuals to the life skills and transition center, state hospital, or other state facility.

**12.1-04-09. Legal objections to prosecution allowed.**

The fact that the defendant is unfit to proceed does not preclude any legal objection to the prosecution which is susceptible of fair determination prior to trial and without the personal participation of the defendant.

**12.1-04-10. Acquittal due to mental disease or defect - Petition to clerk of court.**

Repealed by S.L. 1985, ch. 173, § 29.