

Effective 5/8/2018

Part 9
Removal of County Elected Officer

20A-1-901 Definitions.

As used in this part:

- (1) "Applicable office" means the office held by the subject officer.
- (2) "Mental capacity evaluation" means an evaluation by a qualified medical professional to determine whether the subject officer has the mental capacity to fulfill the essential functions of the applicable office, with or without reasonable accommodations.
- (3) "Officer" means a county officer.
- (4) "Results of the mental capacity evaluation" means a statement by the qualified medical professional who conducts the mental capacity evaluation that the subject officer:
 - (a) has the mental capacity to fulfill the essential functions of the applicable office, without reasonable accommodations;
 - (b) has the mental capacity to fulfill the essential functions of the applicable office, with specified reasonable accommodations; or
 - (c) lacks the mental capacity to fulfill the essential functions of the applicable office, with or without reasonable accommodations.
- (5) "Subject officer" means the officer who is subject to proceedings under this part to determine whether the officer has the mental capacity to fulfill the essential functions of the officer's office, with or without reasonable accommodations.
- (6) "Unanimous" means a vote of all members of a county legislative body where all members of the county legislative body, not including the subject officer, vote on the same side of the motion.

Enacted by Chapter 259, 2018 General Session

20A-1-902 Removal of officer from office -- Initial determination.

- (1)
 - (a) A county legislative body may remove an officer from office in accordance with this part if:
 - (i) the county legislative body adopts the provisions of this part by ordinance, without additions, deletions, or modifications;
 - (ii) the officer lacks the mental capacity to fulfill the essential functions of the applicable office, with or without reasonable accommodations; and
 - (iii) the county legislative body consists of at least five members.
 - (b) This section does not apply to a county, unless the county:
 - (i) has adopted the ordinance described in Subsection (1)(a)(i); and
 - (ii) has at least five members on the county legislative body.
- (2) Before removing the subject officer from office under Subsection (1), the county legislative body shall hold a closed meeting, as authorized under Subsection 52-4-205(1)(a), to discuss whether the subject officer has the mental capacity to fulfill the essential functions of the officer's office, with or without reasonable accommodations.
- (3) At the meeting described in Subsection (2):
 - (a) the county legislative body shall give the subject officer the opportunity to discuss the subject officer's mental capacity to fulfill the essential functions of the applicable office and any

- reasonable accommodations that would enable the subject officer to continue to function in the applicable office; and
- (b) the subject officer may bring one individual to the meeting to assist the subject officer in the discussion.
- (4)
- (a) After the discussion described in Subsection (3), the county legislative body may exclude the subject officer and the individual described in Subsection (3)(b) from the closed portion of the meeting to discuss whether the subject officer has the mental capacity to fulfill the essential functions of the applicable office, with or without reasonable accommodations.
- (b) If the subject officer is a member of the county legislative body:
- (i) the county legislative body may exclude the subject officer and the individual described in Subsection (3)(b) from the portion of the closed meeting described in Subsection (4)(a); and
- (ii) the subject officer is recused from voting on any decision, described in this part, of the county legislative body.
- (c) Notwithstanding the provisions of Title 52, Chapter 4, Open and Public Meetings Act, the county legislative body shall meet in a closed meeting to vote on whether the subject officer has the ability to fulfill the essential functions of the applicable office, with or without reasonable accommodations.
- (5) If the county legislative body reaches a unanimous preliminary conclusion that the subject officer lacks the mental capacity to fulfill the essential functions of the applicable office, with or without reasonable accommodations, the county legislative body shall:
- (a) confidentially inform the subject officer of the vote; and
- (b) allow the subject officer five calendar days, after the day on which the county legislative body makes the conclusion, to:
- (i) resign from the applicable office;
- (ii)
- (A) voluntarily agree to undergo a mental capacity evaluation at the expense of the county; and
- (B) sign a waiver to disclose only the results of the mental capacity evaluation to the county legislative body; or
- (iii) refuse to take any action.
- (6) If the county legislative body does not reach a unanimous preliminary conclusion that the subject officer lacks the mental capacity to fulfill the essential functions of the applicable office, with or without reasonable accommodations:
- (a) the county legislative body shall:
- (i) publicly announce that the vote failed, without disclosing the number of votes for or against and without disclosing the vote of individual members of the county legislative body; and
- (ii) provide any necessary reasonable accommodations; and
- (b) the subject officer may continue to function in the applicable office.

Enacted by Chapter 259, 2018 General Session

20A-1-903 Voluntary evaluation.

- (1) This section does not apply to a county, unless the county:
- (a) has adopted the ordinance described in Subsection 20A-1-902(1)(a)(i); and
- (b) has at least five members on the county legislative body.

- (2) At the end of the five-day period described in Subsection 20A-1-902(5)(b), if the subject officer agrees to the voluntary mental capacity evaluation option described in Subsection 20A-1-902(5)(b)(ii):
 - (a) the county legislative body and the subject officer shall mutually agree on a qualified medical professional to conduct the mental capacity evaluation; and
 - (b) the subject officer shall undergo the mental capacity evaluation within 15 calendar days after the day on which the subject officer agrees to undergo the mental capacity evaluation, or longer if the county legislative body and the subject officer agree to an extended period.
- (3) Notwithstanding the provisions of Title 52, Chapter 4, Open and Public Meetings Act, any action taken by the county legislative body under Subsection (2) shall occur in a closed meeting.
- (4) If the qualified medical professional concludes that the subject officer has the mental capacity to fulfill the essential functions of the applicable office, with or without reasonable accommodations:
 - (a) the county legislative body shall provide any necessary reasonable accommodations; and
 - (b) the subject officer may continue to function in the applicable office.
- (5)
 - (a) If the qualified medical professional concludes that the subject officer lacks the mental capacity to fulfill the essential functions of the applicable office, with or without reasonable accommodations, the subject officer may resign from office.
 - (b) If the subject officer does not resign from office within five calendar days after the day on which the qualified medical professional makes the conclusion described in Subsection (5)(a), the county legislative body may, in an open meeting by unanimous vote, remove the subject officer from the applicable office.

Enacted by Chapter 259, 2018 General Session

20A-1-904 Court order for involuntary evaluation.

- (1) This section does not apply to a county, unless the county:
 - (a) has adopted the ordinance described in Subsection 20A-1-902(1)(a)(i); and
 - (b) has at least five members on the county legislative body.
- (2) The county legislative body may file an action against the subject officer in district court for an order to undergo a mental capacity evaluation if:
 - (a) the county legislative body:
 - (i) unanimously concludes that the subject officer lacks the mental capacity to fulfill the essential functions of the applicable office, with or without reasonable accommodations, in accordance with the requirements of Section 20A-1-902; and
 - (ii) complies with the requirements of Subsections 20A-1-902(2) through (5); and
 - (b)
 - (i) the subject officer does not, within the five-day period described in Subsection 20A-1-902(5)(b):
 - (A) resign from the applicable office; or
 - (B) agree to undergo a voluntary mental capacity evaluation and sign a waiver to disclose only the results of the mental capacity evaluation to the county legislative body;
 - (ii) the subject officer does not complete the mental capacity evaluation within the 15-day period described in Subsection 20A-1-903(2)(b), or any longer period agreed to between the subject officer and the county legislative body; or
 - (iii) the subject officer and the county legislative body cannot mutually agree on a qualified medical professional to conduct the mental capacity evaluation.

- (3) The district court shall order the subject officer to undergo a mental capacity evaluation by a qualified medical professional appointed by the court, and shall provide only the results of the mental capacity evaluation to the county legislative body, if the court finds that there is reasonable cause to believe that the subject officer may lack the mental capacity to fulfill the essential functions of the applicable office, with or without reasonable accommodations.
- (4) If the qualified medical professional concludes that the subject officer has the mental capacity to fulfill the essential functions of the applicable office, with or without reasonable accommodations:
 - (a) the county legislative body shall provide any necessary reasonable accommodations;
 - (b) the subject officer may continue to function in the applicable office; and
 - (c) the court shall order the county legislative body to pay the court costs and reasonable attorney fees of the subject officer.
- (5)
 - (a) If the qualified medical professional concludes that the subject officer lacks the mental capacity to fulfill the essential functions of the applicable office, with or without reasonable accommodations, the subject officer may resign from office.
 - (b) If the subject officer does not resign from office within five calendar days after the day on which the qualified medical professional makes the conclusion described in Subsection (5)(a), the county legislative body may, in an open meeting by unanimous vote, remove the subject officer from the applicable office.
- (6) The court shall dismiss an action filed under this section, and rescind any order to undergo a mental capacity evaluation, if the subject officer resigns from the applicable office.
- (7) The court may order sanctions against the county legislative body if the court finds, by clear and convincing evidence, that the county legislative body filed or pursued an action described in this section in bad faith.

Enacted by Chapter 259, 2018 General Session