

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 243

Short Title: Mental Health/Law Enforcement Custody. (Public)

Sponsors: Representatives Insko, Steen, Barnhart (Primary Sponsors); M. Alexander, Hughes, Lucas, McGee, and Wainwright.

Referred to: Mental Health Reform, if favorable, Judiciary I.

February 23, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY THE TRANSPORTATION AND CUSTODY REQUIREMENTS
3 WHEN LAW ENFORCEMENT OFFICERS TRANSPORT AN INDIVIDUAL
4 PURSUANT TO INVOLUNTARY COMMITMENT PROCEEDINGS.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 122C-251 reads as rewritten:

7 "**§ 122C-251. Transportation and custody.**

8 (a) Except as provided in subsections (f) and (g), transportation of a respondent within a
9 county under the involuntary commitment proceedings of this Article, including admission and
10 discharge, shall be provided by the city or county. The city has the duty to provide
11 transportation of a respondent who is a resident of the city or who is taken into custody in the
12 city limits. The county has the duty to provide transportation for a respondent who resides in
13 the county outside city limits or who is taken into custody outside of city limits. However,
14 cities and counties may contract with each other to provide transportation.

15 (b) Except as provided in subsections (f) and (g) or in G.S. 122C-408(b), transportation
16 between counties under the involuntary commitment proceedings of this Article for admission
17 to a 24-hour facility shall be provided by the county where the respondent is taken into custody.
18 Transportation between counties under the involuntary commitment proceedings of this Article
19 for respondents held in 24-hour facilities who have requested a change of venue for the district
20 court hearing shall be provided by the county where the petition for involuntary commitment
21 was initiated. Transportation between counties under the involuntary commitment proceedings
22 of this Article for discharge of a respondent from a 24-hour facility shall be provided by the
23 county of residence of the respondent. However, a respondent being discharged from a facility
24 may use his own transportation at his own expense.

25 (c) Transportation of a respondent may be by city- or county-owned vehicles or by
26 private vehicle by contract with the city or county. To the extent feasible, law enforcement
27 officers transporting respondents shall dress in plain clothes and shall travel in unmarked
28 vehicles. Further, law enforcement officers, to the extent possible, shall advise respondents
29 when taking them into custody that they are not under arrest and have not committed a crime,
30 but are being taken into custody and transported to receive treatment and for their own safety
31 and that of others.

32 (d) In providing transportation of a respondent, a city or county shall provide a driver or
33 attendant who is the same sex as the respondent, unless the law-enforcement officer allows a
34 family member of the respondent to accompany the respondent in lieu of an attendant of the
35 same sex as the respondent.



1 (e) In providing the transportation and custody required by this section, the
2 law-enforcement officer may use reasonable force to restrain the respondent if it appears
3 necessary to protect himself, the respondent, or others. No law-enforcement officer may be held
4 criminally or civilly liable for assault, false imprisonment, or other torts or crimes on account
5 of reasonable measures taken under the authority of this Article.

6 (f) Notwithstanding the provisions of subsections (a), (b), and (c) of this section, a
7 clerk, a magistrate, or a district court judge, where applicable, may authorize the family or
8 immediate friends of the respondent, if they so request, to transport the respondent in
9 accordance with the procedures of this Article. This authorization shall only be granted in cases
10 where the danger to the public, the family or friends of the respondent, or the respondent
11 himself is not substantial. The family or immediate friends of the respondent shall bear the
12 costs of providing this transportation.

13 (g) The governing body of a city or county may adopt a plan for the transportation and
14 custody of respondents in involuntary commitment proceedings in this Article.
15 Law-enforcement personnel, volunteers, or other public or private agency personnel may be
16 designated to provide all or parts of the transportation and custody required by involuntary
17 commitment proceedings. Persons so designated shall be trained and the plan shall assure
18 adequate safety and protections for both the public and the respondent. Law enforcement, other
19 affected agencies, and the area authority shall participate in the planning. If any person other
20 than a law-enforcement agency is designated by a city or county, the person so designated shall
21 provide the transportation and follow the procedures in this Article. References in this Article
22 to a law-enforcement officer apply to this person.

23 (h) The cost and expenses of transporting a respondent to or from a 24-hour facility is
24 the responsibility of the county of residence of the respondent. The State (when providing
25 transportation under G.S. 122C-408(b)), a city, or a county is entitled to recover the reasonable
26 cost of transportation from the county of residence of the respondent. The county of residence
27 of the respondent shall reimburse the State, another county, or a city the reasonable
28 transportation costs incurred as authorized by this subsection. The county of residence of the
29 respondent is entitled to recover the reasonable cost of transportation it has paid to the State, a
30 city, or a county. Provided that the county of residence provides the respondent or other
31 individual liable for the respondent's support a reasonable notice and opportunity to object to
32 the reimbursement, the county of residence of the respondent may recover that cost from:

- 33 (1) The respondent, if the respondent is not indigent;
- 34 (2) Any person or entity that is legally liable for the resident's support and
35 maintenance provided there is sufficient property to pay the cost;
- 36 (3) Any person or entity that is contractually responsible for the cost; or
- 37 (4) Any person or entity that otherwise is liable under federal, State, or local law
38 for the cost."

39 **SECTION 2.** G.S. 122C-263(d) reads as rewritten:

40 **"§ 122C-263. Duties of law-enforcement officer; first examination by physician or eligible**
41 **psychologist.**

42 ...

43 (d) After the conclusion of the examination the physician or eligible psychologist shall
44 make the following determinations:

- 45 (1) If the physician or eligible psychologist finds that:
 - 46 a. The respondent is mentally ill;
 - 47 b. The respondent is capable of surviving safely in the community with
48 available supervision from family, friends, or others;
 - 49 c. Based on the respondent's psychiatric history, the respondent is in
50 need of treatment in order to prevent further disability or

1 deterioration that would predictably result in dangerousness as
2 defined by G.S. 122C-3(11); and

- 3 d. The respondent's current mental status or the nature of the
4 respondent's illness limits or negates the respondent's ability to make
5 an informed decision to seek voluntarily or comply with
6 recommended treatment.

7 The physician or eligible psychologist shall so show on the examination
8 report and shall recommend outpatient commitment. In addition the
9 examining physician or eligible psychologist shall show the name, address,
10 and telephone number of the proposed outpatient treatment physician or
11 center. The person designated in the order to provide transportation shall
12 return the respondent to the respondent's regular residence or, with the
13 respondent's consent, to the home of a consenting individual located in the
14 originating county, and the respondent shall be released from custody.

- 15 (2) If the physician or eligible psychologist finds that the respondent is mentally
16 ill and is dangerous to self, as defined in G.S. 122C-3(11)a., or others, as
17 defined in G.S. 122C-3(11)b., the physician or eligible psychologist shall
18 recommend inpatient commitment, and shall so show on the examination
19 report. If, in addition to mental illness and dangerousness, the physician or
20 eligible psychologist also finds that the respondent is known or reasonably
21 believed to be mentally retarded, this finding shall be shown on the report.
22 The law enforcement officer or other designated person shall take the
23 respondent to a 24-hour facility described in G.S. 122C-252 pending a
24 district court hearing. If there is no area 24-hour facility and if the
25 respondent is indigent and unable to pay for care at a private 24-hour
26 facility, the law enforcement officer or other designated person shall take the
27 respondent to a State facility for the mentally ill designated by the
28 Commission in accordance with G.S. 143B-147(a)(1)a. for custody,
29 observation, and treatment and immediately notify the clerk of superior court
30 of this action.

31 In the event an individual known or reasonably believed to be mentally
32 retarded is transported to a State facility for the mentally ill, in no event shall
33 that individual be admitted to that facility except as follows:

- 34 a. Persons described in G.S. 122C-266(b);
35 b. Persons admitted pursuant to G.S. 15A-1321;
36 c. Respondents who are so extremely dangerous as to pose a serious
37 threat to the community and to other patients committed to non-State
38 hospital psychiatric inpatient units, as determined by the Director of
39 the Division of Mental Health, Developmental Disabilities, and
40 Substance Abuse Services or his designee; and
41 d. Respondents who are so gravely disabled by both multiple disorders
42 and medical fragility or multiple disorders and deafness that
43 alternative care is inappropriate, as determined by the Director of the
44 Division of Mental Health, Developmental Disabilities, and
45 Substance Abuse Services or his designee.

46 Individuals transported to a State facility for the mentally ill who are not
47 admitted by the facility may be transported by law enforcement officers or
48 designated staff of the State facility in State-owned vehicles to an
49 appropriate 24-hour facility that provides psychiatric inpatient care.

50 No later than 24 hours after the transfer, the responsible professional at
51 the original facility shall notify the petitioner, the clerk of court, and, if

1 consent is granted by the respondent, the next of kin, that the transfer has
2 been completed.

3 (3) If the physician or eligible psychologist finds that neither condition
4 described in subdivisions (1) or (2) of this subsection exists, the proceedings
5 shall be terminated. The person designated in the order to provide
6 transportation shall return the respondent to the respondent's regular
7 residence or, with the respondent's consent, to the home of a consenting
8 individual located in the originating county and the respondent shall be
9 released from custody.

10 (4) If, in addition to recommending inpatient commitment, the physician or
11 eligible psychologist also finds that the respondent is in need of medical
12 evaluation or treatment prior to transport to a 24-hour facility described in
13 G.S. 122C-252, the law enforcement officer or other person authorized
14 under G.S. 122C-251(g) shall take the respondent to a licensed medical
15 hospital for evaluation and treatment not to exceed five days. This hospital
16 may be the same hospital where the first commitment examination is
17 performed. During the five-day period, the custody order remains in effect,
18 custody shall be maintained pursuant to a plan adopted in accordance with
19 G.S. 122C-251(g), and the respondent shall be transported to a 24-hour
20 facility described in G.S. 122C-252 as soon as the respondent can be safely
21 transported to and received by the 24-hour facility. If the attending physician
22 at the licensed medical hospital determines that the respondent's need for
23 medical evaluation or treatment will exceed five days, the physician shall
24 notify the clerk of court, and the commitment proceedings shall be
25 terminated. If, during or following the administration of medical evaluation
26 or treatment, a physician or eligible psychologist determines that the
27 respondent no longer meets the criteria for inpatient commitment, the
28 physician or eligible psychologist shall notify the clerk of superior court in
29 accordance with subsection (e) of this section that either the commitment
30 proceedings should be terminated or that a hearing should be scheduled to
31 determine whether an outpatient commitment order should be issued. This
32 physician shall not be the same physician who completed the first
33 examination recommending commitment.

34"

35 **SECTION 3.** This act becomes effective October 1, 2009.