

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 243
Committee Substitute Favorable 5/11/09
Committee Substitute #2 Favorable 5/13/09
Fourth Edition Engrossed 5/14/09
Senate Health Care Committee Substitute Adopted 6/24/09
Sixth Edition Engrossed 6/29/09

Short Title: Mental Health/Law Enforcement Custody.

(Public)

Sponsors:

Referred to:

February 23, 2009

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE FACILITY OF FIRST COMMITMENT EXAMINATION TO TERMINATE THE INPATIENT COMMITMENT PROCEEDINGS IN APPROPRIATE CIRCUMSTANCES WHEN A TWENTY-FOUR-HOUR FACILITY IS NOT AVAILABLE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 122C-261(d) reads as rewritten:

"(d) If the affiant is a physician or eligible psychologist, the affiant may execute the affidavit before any official authorized to administer oaths. This affiant is not required to appear before the clerk or magistrate for this purpose. This affiant shall file the affidavit with the clerk or magistrate by delivering to the clerk or magistrate the original affidavit or a copy in paper form that is printed through the facsimile transmission of the affidavit. If the affidavit is filed through facsimile transmission, the affiant shall mail the original affidavit no later than five days after the facsimile transmission of the affidavit to the clerk or magistrate to be filed by the clerk or magistrate with the facsimile copy of the affidavit. This affiant's examination shall comply with the requirements of the initial examination as provided in G.S. 122C-263(c). If the physician or eligible psychologist recommends outpatient commitment and the clerk or magistrate finds probable cause to believe that the respondent meets the criteria for outpatient commitment, the clerk or magistrate shall issue an order that a hearing before a district court judge be held to determine whether the respondent will be involuntarily committed. The physician or eligible psychologist shall provide the respondent with written notice of any scheduled appointment and the name, address, and telephone number of the proposed outpatient treatment physician or center. If the physician or eligible psychologist recommends inpatient commitment and the clerk or magistrate finds probable cause to believe that the respondent meets the criteria for inpatient commitment, the clerk or magistrate shall issue an order for transportation to or custody at a 24-hour facility described in G.S. ~~122C-252~~, 122C-252, provided that if a 24-hour facility is not immediately available or appropriate to the respondent's medical condition, the respondent may be temporarily detained under appropriate supervision and, upon further examination, released in accordance with G.S. 122C-263(d)(2). ~~However, if~~ If the clerk or magistrate finds probable cause to believe that the respondent, in addition to being mentally ill, is also mentally retarded, the clerk or magistrate shall contact the area authority before issuing the order and the area authority shall



1 designate the facility to which the respondent is to be transported. If a physician or eligible
2 psychologist executes an affidavit for inpatient commitment of a respondent, a second
3 physician shall be required to perform the examination required by G.S. 122C-266."

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

5 "**§ 122C-263. Duties of law-enforcement officer; first examination by physician or eligible**
6 **psychologist.**

7 ...

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

10 (1) If the physician or eligible psychologist finds that:

- 11 a. The respondent is mentally ill;
12 b. The respondent is capable of surviving safely in the community with
13 available supervision from family, friends, or others;
14 c. Based on the respondent's psychiatric history, the respondent is in
15 need of treatment in order to prevent further disability or
16 deterioration that would predictably result in dangerousness as
17 defined by G.S. 122C-3(11); and
18 d. The respondent's current mental status or the nature of the
19 respondent's illness limits or negates the respondent's ability to make
20 an informed decision to seek voluntarily or comply with
21 recommended treatment.

22 The physician or eligible psychologist shall so show on the examination
23 report and shall recommend outpatient commitment. In addition the
24 examining physician or eligible psychologist shall show the name, address,
25 and telephone number of the proposed outpatient treatment physician or
26 center. The person designated in the order to provide transportation shall
27 return the respondent to the respondent's regular residence or, with the
28 respondent's consent, to the home of a consenting individual located in the
29 originating county, and the respondent shall be released from custody.

30 (2) If the physician or eligible psychologist finds that the respondent is mentally
31 ill and is dangerous to self, as defined in G.S. 122C-3(11)a., or others, as
32 defined in G.S. 122C-3(11)b., the physician or eligible psychologist shall
33 recommend inpatient commitment, and shall so show on the examination
34 report. If, in addition to mental illness and dangerousness, the physician or
35 eligible psychologist also finds that the respondent is known or reasonably
36 believed to be mentally retarded, this finding shall be shown on the report.
37 The law enforcement officer or other designated person shall take the
38 respondent to a 24-hour facility described in G.S. 122C-252 pending a
39 district court hearing. If there is no area 24-hour facility and if the
40 respondent is indigent and unable to pay for care at a private 24-hour
41 facility, the law enforcement officer or other designated person shall take the
42 respondent to a State facility for the mentally ill designated by the
43 Commission in accordance with G.S. 143B-147(a)(1)a. for custody,
44 observation, and treatment and immediately notify the clerk of superior court
45 of this action. If a 24-hour facility is not immediately available or
46 appropriate to the respondent's medical condition, the respondent may be
47 temporarily detained under appropriate supervision at the site of the first
48 examination, provided that at anytime that a physician or eligible
49 psychologist determines that the respondent is no longer in need of inpatient
50 commitment, the proceedings shall be terminated and the respondent
51 transported and released in accordance with subdivision (3) of this

1 subsection. However, if the physician or eligible psychologist determines
2 that the respondent meets the criteria for outpatient commitment, as defined
3 in subdivision (1) of this subsection, the physician or eligible psychologist
4 may recommend outpatient commitment, and the respondent shall be
5 transported and released in accordance with subdivision (1) of this
6 subsection. Any decision to terminate the proceedings or to recommend
7 outpatient commitment after an initial recommendation of inpatient
8 commitment shall be documented and reported to the clerk of superior court
9 in accordance with subsection (e) of this section. If the respondent is
10 temporarily detained and a 24-hour facility is not available or medically
11 appropriate seven days after the issuance of the custody order, a physician or
12 psychologist shall report this fact to the clerk of superior court and the
13 proceedings shall be terminated. Termination of proceedings pursuant to this
14 subdivision shall not prohibit or prevent the initiation of new involuntary
15 commitment proceedings when appropriate. Affidavits filed in support of
16 proceedings terminated pursuant to this subdivision may not be submitted in
17 support of any subsequent petitions for involuntary commitment. If the
18 affiant initiating new commitment proceedings is a physician or eligible
19 psychologist, the affiant shall conduct a new examination and may not rely
20 upon examinations conducted as part of proceedings terminated pursuant to
21 this subdivision.

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

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

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

41 No later than 24 hours after the transfer, the responsible professional at
42 the original facility shall notify the petitioner, the clerk of court, and, if
43 consent is granted by the respondent, the next of kin, that the transfer has
44 been completed.

- 45 (3) If the physician or eligible psychologist finds that neither condition
46 described in subdivisions (1) or (2) of this subsection exists, the proceedings
47 shall be terminated. The person designated in the order to provide
48 transportation shall return the respondent to the respondent's regular
49 residence or, with the respondent's consent, to the home of a consenting
50 individual located in the originating county and the respondent shall be
51 released from custody."

1 **SECTION 3.** Section 1(5) of S.L. 2003-178, as amended by Section 10.27 of S.L.
2 2006-66, and as further amended by Section 1.1(a)(5) of S.L. 2007-504, reads as rewritten:
3 "(5) The Secretary may grant a waiver under this section to up to ~~10~~15 LMEs."
4 **SECTION 4.** Section 3 of this act becomes effective July 1, 2009. The remainder
5 of this act becomes effective October 1, 2009.