

GENERAL ASSEMBLY OF NORTH CAROLINA  
1995 SESSION

CHAPTER 739  
SENATE BILL 859

AN ACT TO AMEND THE MENTAL HEALTH COMMITMENT LAW TO  
PROVIDE FOR DIVERSION OF POTENTIAL THOMAS S. CLASS MEMBERS  
TO APPROPRIATE TREATMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 122C-132 reads as rewritten:

**"§ 122C-132. Single portal of entry and exit designation for mental health and substance abuse facilities.**

(a) The public system should provide for a single portal of entry and exit policy for State and area mental health and substance abuse facilities. In order to accomplish this objective, an area authority desiring designation as a single portal area shall present to the Secretary a single portal of entry and exit plan approved by the area board. The decision as to whether to choose to submit a plan is in the discretion of the area authority after weighing the policy goal stated in this subsection and in G.S. 122C-101. The single portal of entry and exit policy for State and area mental health and substance abuse facilities does not preclude those individuals who have the resources to pay for the cost of inpatient hospital care without the use of any (i) public funds appropriated to the area authority or (ii) Medicaid funds from selecting a facility for treatment and care which is different from that designated by the area authority in its single portal plan.

(b) In order for a single portal area to be designated, the single portal of entry and exit plan shall be subject to approval by the Secretary. Once an area is designated by the Secretary as a single portal area, any changes to the plan shall be subject to approval by the Secretary. ~~However, an approved plan and designation as a single portal area shall remain in force pending approval of any changes. In order for a single portal plan approved before July 1, 1996, to remain in force, it shall be reviewed by the area authority, show evidence of renewal of the agreements provided for in subdivision (c)(5) below, and be reapproved by the Secretary after July 1, 1996.~~

(c) The plan shall include but not be limited to:

- (1) A specific listing of facilities to be covered by the single portal of entry and exit plan;
- (2) Procedures for review of individuals to be admitted to or discharged from State and area facilities;
- (3) Procedures for shared responsibility when individuals are admitted directly to a State facility;
- (3a) Procedures for treatment of mentally retarded individuals with mental illness who are committed to a 24-hour facility;

- (4) Evidence of incorporation of these plans within the contracts between the area authority and the State facilities as required by G.S. 122C-143(c) and with other public and private agencies as required in G.S. 122C-141;
- (5) Evidence of cooperative arrangements with local law enforcement, local courts, and the local medical society; and
- (6) Procedures for review of citizen complaints.

(d) Residents of a county in a designated single portal area who do not have the resources to pay for the cost of inpatient hospital care without the use of any (i) public funds appropriated to the area authority or (ii) Medicaid funds shall be admitted to or discharged from State and area facilities through the area authority as described in the area's single portal of entry and exit policy."

Sec. 2. G.S. 122C-201 reads as rewritten:

**"§ 122C-201. Declaration of policy.**

It is State policy to encourage voluntary admissions to facilities. It is further State policy that no individual shall be involuntarily committed to a 24-hour facility unless ~~he~~ that individual is mentally ill or a substance abuser and dangerous to ~~himself-self or others, or unless he is mentally retarded and, because of an accompanying behavior disorder, is dangerous to others.~~ others. All admissions and commitments shall be accomplished under conditions that protect the dignity and constitutional rights of the individual.

It is further State policy that, except as provided in G.S. 122C-212(b), individuals who have been voluntarily admitted shall be discharged upon application and that involuntarily committed individuals shall be discharged as soon as a less restrictive mode of treatment is appropriate."

Sec. 3. G.S. 122C-210.1 reads as rewritten:

**"§ 122C-210.1. Immunity from liability.**

No facility or any of its officials, staff, or employees, or any physician or other individual who is responsible for the custody, examination, management, supervision, treatment, or release of a client and who follows accepted professional judgment, practice, and standards is civilly liable, personally or otherwise, for actions arising from these responsibilities or for actions of the client. This immunity is in addition to any other legal immunity from liability to which these facilities or individuals may be ~~entitled.~~ entitled and applies to actions performed in connection with, or arising out of, the admission or commitment of any individual pursuant to this Article."

Sec. 4. G.S. 122C-251(c) reads as rewritten:

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

Sec. 5. The title of Part 7 of Article 5 of Chapter 122C of the General Statutes reads as rewritten:

"Part 7. Involuntary Commitment of the Mentally Ill ~~and the Mentally Retarded with Behavior Disorders~~; Facilities for the Mentally Ill."

Sec. 6. G.S. 122C-261 reads as rewritten:

"§ 122C-261. **Affidavit and petition before clerk or magistrate; magistrate when immediate hospitalization is not necessary; custody order.**

(a) Anyone who has knowledge of an individual who ~~is: (i) is~~ is mentally ill and either (i) dangerous to himself, self, as defined in G.S. 122C-3(11)a., or dangerous to others, as defined in G.S. 122C-3(11)b., or (ii) in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness, or ~~(ii) mentally retarded and, because of an accompanying behavior disorder, is dangerous to others, as defined in G.S. 122C-3(11)b., dangerousness,~~ may appear before a clerk or assistant or deputy clerk of superior court or a magistrate and execute an affidavit to this effect, and petition the clerk or magistrate for issuance of an order to take the respondent into custody for examination by a physician or eligible psychologist. The affidavit shall include the facts on which the affiant's opinion is based. If the affiant has knowledge or reasonably believes that the respondent, in addition to being mentally ill, is also mentally retarded, this fact shall be stated in the affidavit. Jurisdiction under this subsection is in the clerk or magistrate in the county where the respondent resides or is found.

(b) If the clerk or magistrate finds reasonable grounds to believe that the facts alleged in the affidavit are true and that the respondent is probably ~~(i) mentally ill and either (i) dangerous to himself, self, as defined in G.S. 122C-3(11)a., or dangerous to others, as defined in G.S. 122C-3(11)b., or (ii) in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness, or (ii) mentally retarded and, because of an accompanying behavior disorder, is dangerous to others, as defined in G.S. 122C-3(11)b.,~~ he the clerk or magistrate shall issue an order to a ~~law enforcement~~ law enforcement officer or any other person authorized under G.S. 122C-251 to take the respondent into custody for examination by a physician or eligible psychologist. If the clerk or magistrate finds that, in addition to probably being mentally ill, the respondent is also probably mentally retarded, the clerk or magistrate shall contact the area authority before issuing a custody order and the area authority shall designate the facility to which the respondent is to be taken for examination by a physician or eligible psychologist. The clerk or magistrate shall provide the petitioner and the respondent, if present, with specific information regarding the next steps that will occur for the respondent.

(c) If the clerk or magistrate issues a custody order, ~~he~~ the clerk or magistrate shall also make inquiry in any reliable way as to whether the respondent is indigent within the meaning of G.S. 7A-450. A magistrate shall report the result of this inquiry to the clerk.

(d) If the affiant is a physician or eligible psychologist, ~~he~~ the affiant may execute the affidavit before any official authorized to administer oaths. ~~He~~ This affiant is not required to appear before the clerk or magistrate for this purpose. ~~His~~ 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, ~~he~~ 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. If a physician or eligible psychologist recommends outpatient commitment, ~~he~~ the clerk or magistrate 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, ~~he~~ the clerk or magistrate shall issue an order for transportation to or custody at a 24-hour facility described in G.S. 122C-252. However, 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 designate the facility to which the respondent is to be transported. If a physician or eligible psychologist executes an affidavit for inpatient commitment of a respondent, a second physician shall be required to perform the examination required by G.S. 122C-266.

(e) Upon receipt of the custody order of the clerk or magistrate or a custody order issued by the court pursuant to G.S. 15A-1003, a ~~law enforcement~~ law enforcement officer or other person designated in the order shall take the respondent into custody within 24 hours after the order is signed, and proceed according to G.S. 122C-263.

(f) When a petition is filed for an individual who is a resident of a single portal area, the procedures for examination by a physician or eligible psychologist as set forth in G.S. 122C-263 shall be carried out in accordance with the area plan. Prior to issuance of a custody order for a respondent who resides in an area authority with a single portal plan, the clerk or magistrate shall communicate with the area authority to determine the appropriate 24-hour facility to which the respondent should be admitted according to the area plan or to determine if there are more appropriate resources available through the area authority to assist the petitioner or the respondent. When an individual from a single portal area is presented for commitment at a 24-hour or State facility directly, the individual may not be accepted for admission until the facility notifies the area authority and the area authority agrees to the admission. If the area authority does not agree to the admission, it shall determine the appropriate 24-hour facility to which the individual should be admitted according to the area plan or determine if there are more appropriate resources available through the area authority to assist the individual. If the area authority agrees to the admission, ~~he may be accepted for admission in accordance with G.S. 122C-266.~~ The facility shall notify the area authority within 24 hours of the admission and further planning of treatment for the client is the joint responsibility of the area authority and the facility as prescribed in the area plan.

Notwithstanding the provisions of this section, in no event shall an individual known or reasonably believed to be mentally retarded be admitted to a State psychiatric hospital, except as follows:

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

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

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

Sec. 7. G.S. 122C-262 reads as rewritten:

**"§ 122C-262. Special emergency procedure for individuals needing immediate hospitalization.**

(a) Anyone, including a law enforcement officer, who has knowledge of an individual who is subject to inpatient commitment according to the criteria of G.S. 122C-261(a) and who requires immediate hospitalization to prevent harm to ~~himself~~ self or others, may transport the individual directly to an area facility or other place, including a State facility for the mentally ill, for examination by a physician or eligible ~~psychologist, psychologist~~ psychologist in accordance with ~~G.S. 122C-263(a)~~ G.S. 122C-263(c).

(b) ~~If~~ Upon examination by the physician or eligible psychologist, if the individual meets the criteria required in G.S. 122C-261(a), the physician or eligible psychologist shall so certify in writing before any official authorized to administer oaths. The certificate shall also state the reason that the individual requires immediate hospitalization. If the physician or eligible psychologist knows or has reason to believe that the individual is mentally retarded, the certificate shall so state.

(c) If the physician or eligible psychologist executes the oath, appearance before a magistrate shall be waived. The physician or eligible psychologist shall send a copy of the certificate to the clerk of superior court by the most reliable and expeditious means. If it cannot be reasonably anticipated that the clerk will receive the copy within ~~24 hours (excluding hours, excluding Saturday, Sunday and holidays)~~ Sunday, and holidays, of the time that it was signed, the physician or eligible psychologist shall also communicate ~~his~~ the findings to the clerk by telephone.

(d) Anyone, including a law enforcement officer if necessary, may transport the individual to a 24-hour facility described in G.S. 122C-252 for examination and treatment pending a district court hearing. If there is no area 24-hour facility and if the

respondent is indigent and unable to pay for his care at a private 24-hour facility, the law enforcement officer or other designated person providing transportation shall take the respondent to a State facility for the mentally ill designated by the Commission in accordance with G.S. 143B-147(a)(1)a and immediately notify the clerk of superior court of his actions. this action. The physician's or eligible psychologist's certificate shall serve as the custody order and the law enforcement officer or other designated person shall provide transportation in accordance with the provisions of G.S. 122C-251.

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

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

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

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

(e) Respondents received at a 24-hour facility under the provisions of this section shall be examined by a second physician in accordance with G.S. 122C-266. After receipt of notification that the ~~District Court~~ district court has determined reasonable grounds for the commitment, further proceedings shall be carried out in the same way as for all other respondents under this Part."

Sec. 8. (a) G.S. 122C-263(a) reads as rewritten:

"(a) Without unnecessary delay after assuming custody, the ~~law enforcement~~ law enforcement officer or the individual designated by the clerk or magistrate under G.S. 122C-251(g) to provide transportation shall take the respondent to an area facility for examination by a physician or eligible psychologist; if a physician or eligible psychologist is not available in the area facility, ~~he~~ the person designated to provide transportation shall take the respondent to any physician or eligible psychologist locally available. If a physician or eligible psychologist is not immediately available, the respondent may be temporarily detained in an area facility, if one is available; if an area facility is not available, ~~he~~ the respondent may be detained under appropriate

supervision in ~~his~~ the respondent's home, in a private hospital or a clinic, in a general hospital, or in a State facility for the mentally ill, but not in a jail or other penal facility."

(b) G.S. 122C-263(c) reads as rewritten:

"(c) The physician or eligible psychologist described in subsection (a) of this section shall examine the respondent as soon as possible, and in any event within 24 hours, after the respondent is presented for examination. The examination shall include but is not limited to an assessment of the respondent's:

- (1) Current and previous mental illness ~~or~~ and mental retardation including, if available, previous treatment history;
- (2) Dangerousness to ~~himself~~, self, as defined in G.S. 122C-3(11)a. or others, as defined in G.S. 122C-3(11)b.;
- (3) Ability to survive safely without inpatient commitment, including the availability of supervision from family, friends or others; and
- (4) Capacity to make an informed decision concerning treatment."

(c) G.S. 122C-263(d) reads as rewritten:

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

- (1) If the physician or eligible psychologist finds that:
  - a. The respondent is mentally ill;
  - b. The respondent is capable of surviving safely in the community with available supervision from family, friends, or others;
  - c. Based on the respondent's psychiatric history, the respondent is in need of treatment in order to prevent further disability or deterioration ~~which~~ that would predictably result in dangerousness as defined by G.S. 122C-3(11); and
  - d. ~~His~~ The respondent's current mental status or the nature of ~~his~~ the respondent's illness limits or negates ~~his~~ the respondent's ability to make an informed decision to seek voluntarily or comply with recommended ~~treatment~~; treatment.

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

- (2) If the physician or eligible psychologist finds that the respondent is mentally ill and is dangerous to ~~himself~~ self, as defined in G.S. 122C-3(11)a., or others, as defined in G.S. 122C-3(11)b., ~~or is mentally retarded, and because of an accompanying behavior disorder, is dangerous to others, as defined in G.S. 122C-3(11)b., he~~ the physician

or eligible psychologist shall recommend inpatient commitment, and he shall so show on his the examination report. If, in addition to mental illness and dangerousness, the physician or eligible psychologist also finds that the respondent is known or reasonably believed to be mentally retarded, this finding shall be shown on the report. The law enforcement law enforcement officer or other designated person shall take the respondent to a 24-hour facility described in G.S. 122C-252 pending a district court hearing. If there is no area 24-hour facility and if the respondent is indigent and unable to pay for his care at a private 24-hour facility, the law enforcement law enforcement officer or other designated person shall take the respondent to a State facility for the mentally ill designated by the Commission in accordance with G.S. 143B-157(a)(1)a 143B-147(a)(1)a. for custody, observation, and treatment and immediately notify the clerk of superior court of his actions. this action.

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

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

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

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

- (3) If the physician or eligible psychologist finds that neither condition described in subdivisions (1) or (2) of this subsection exists, the respondent shall be released and the proceedings shall be terminated.



The person designated in the order to provide transportation shall return the respondent to the respondent's regular residence or, with the respondent's consent, to the home of a consenting individual located in the originating county and the respondent shall be released from custody."

(d) G.S. 122C-263 is amended by adding a new subsection to read:

"(g) The physician or eligible psychologist, at the completion of the examination, shall provide the respondent with specific information regarding the next steps that will occur."

Sec. 9. G.S. 122C-264(b1) reads as rewritten:

"(b1) Upon receipt of a physician's or eligible psychologist's certificate that a respondent meets the criteria of G.S. 122C-261(a) and that immediate hospitalization is ~~needed,~~ needed pursuant to G.S. 122C-262, the clerk of superior court of the county where the ~~24-hour treatment~~ facility is located shall submit the certificate to the Chief District Court Judge. The court shall review the certificate within ~~24 hours (excluding hours, excluding Saturday, Sunday and holidays)~~ Sunday, and holidays, for a finding of reasonable grounds in accordance with 122C-261(b). The clerk shall notify the ~~24-hour treatment~~ facility of the court's findings by telephone and shall proceed as set forth in subsections (b), (e)-(c), and (f) of this section."

Sec. 10. (a) G.S. 122C-266(a) reads as rewritten:

"(a) Except as provided in subsections (b) and (e), within 24 hours of arrival at a 24-hour facility described in G.S. 122C-252, the respondent shall be examined by a physician. This physician shall not be the same physician who completed the certificate or examination under the provisions of G.S. 122C-262 or G.S. 122C-263. The examination shall include but is not limited to the assessment specified in G.S. 122C-263(c).

- (1) If the physician finds that the respondent is mentally ill and is dangerous to ~~himself, self,~~ as defined by G.S. 122C-3(11)a., or others, as defined by G.S. 122C-3(11)b., ~~or is mentally retarded and, because of an accompanying behavior disorder, is dangerous to others, as defined in G.S. 122C-3(11)b.,~~ he the physician shall hold the respondent at the facility pending the district court hearing.
- (2) If the physician finds that the respondent meets the criteria for outpatient commitment under G.S. 122C-263(d)(1), ~~he the physician~~ shall show ~~his~~ these findings on the physician's examination report, release the respondent pending the district court hearing, and notify the clerk of superior court of the county where the petition was initiated of ~~his~~ these findings. In addition, the examining physician shall show on the examination report the name, address, and telephone number of the proposed outpatient treatment physician or center. ~~He~~ The physician shall give the respondent a written notice listing the name, address, and telephone number of the proposed outpatient treatment physician or center and directing the respondent to appear at that address at a specified date and time. The examining physician before the

appointment shall notify by telephone and shall send a copy of the notice and ~~his~~the examination report to the proposed outpatient treatment physician or center.

(3) If the physician finds that the respondent does not meet the criteria for commitment under either G.S. 122C-263(d)(1) or G.S. 122C-263(d)(2), ~~he~~the physician shall release the respondent and the proceedings shall be terminated.

(4) If the respondent is released under subdivisions (2) or (3) of this subsection, the ~~law enforcement~~law enforcement officer or other person designated to provide transportation shall return the respondent to the ~~originating county.~~respondent's residence in the originating county or, if requested by the respondent, to another location in the originating county.

(b) G.S. 122C-266(e) reads as rewritten:

"(e) If the 24-hour facility described in G.S. 122C-252 or G.S. 122C-262 is the facility in which the first examination by a physician or eligible psychologist occurred and is the same facility in which the respondent is held, the second examination ~~must~~ shall occur not later than the following regular working day."

Sec. 11. (a) G.S. 122C-268(a) reads as rewritten:

"(a) A hearing shall be held in district court within 10 days of the day the respondent is taken into law enforcement custody pursuant to G.S. ~~122C-261(e).~~122C-261(e) or G.S. 122C-262. A continuance of not more than five days may be granted upon motion of:

(1) The court;

(2) Respondent's counsel; or

(3) The State, sufficiently in advance to avoid movement of the respondent."

(b) G.S. 122C-268(j) reads as rewritten:

"(j) To support an inpatient commitment order, the court shall find by clear, cogent, and convincing evidence that the respondent is mentally ill and dangerous to ~~himself, self,~~ as defined in G.S. 122C-3(11)a., or dangerous to others, as defined in ~~G.S. 122C-3(11)b., or is mentally retarded and, because of an accompanying behavior disorder, is dangerous to others, as defined in~~ G.S. 122C-3(11)b. The court shall record the facts that support its findings."

Sec. 12. (a) G.S. 122C-270(a) reads as rewritten:

"(a) The senior regular resident superior court judge of a superior court district or set of districts as defined in G.S. 7A-41.1 in which a State facility for the mentally ill is located shall appoint an attorney licensed to practice in North Carolina as special counsel for indigent respondents who are mentally ~~ill or mentally retarded with an accompanying behavior disorder.~~ ill. This special counsel shall serve at the pleasure of the appointing judge, may not privately practice law, and shall receive annual compensation within the salary range for assistant district attorneys as fixed by the Administrative Officer of the Courts. The special counsel shall represent all indigent respondents at all hearings, rehearings, and supplemental hearings held at the State

facility and on appeals held under this Article. Special counsel shall determine indigency in accordance with G.S. 7A-450(a). Indigency is subject to redetermination by the presiding judge."

Sec. 13. G.S. 122C-271(b) reads as rewritten:

"(b) If the respondent has been held in a 24-hour facility pending the district court hearing pursuant to G.S. 122C-268, the court may make one of the following dispositions:

- (1) If the court finds by clear, cogent, and convincing evidence that the respondent is mentally ill; that ~~he~~ the respondent is capable of surviving safely in the community with available supervision from family, friends, or others; that based on respondent's psychiatric history, the respondent is in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness as defined by G.S. 122C-3(11); and that the respondent's current mental status or the nature of ~~his~~ the respondent's illness limits or negates ~~his~~ the respondent's ability to make an informed decision voluntarily to seek or comply with recommended treatment, it may order outpatient commitment for a period not in excess of 90 days. If the commitment proceedings were initiated as the result of the respondent's being charged with a violent crime, including a crime involving an assault with a deadly weapon, and the respondent was found incapable of proceeding, the commitment order shall so show.
- (2) If the court finds by clear, cogent, and convincing evidence that the respondent is mentally ill and is dangerous to ~~himself, self,~~ as defined in G.S. 122C-3(11)a., or others, as defined in G.S. 122C-3(11)b., ~~or is mentally retarded and, because of an accompanying behavior disorder, is dangerous to others, as defined in G.S. 122C-3(11)b.,~~ it may order inpatient commitment at a 24-hour facility described in G.S. 122C-252 for a period not in excess of 90 days. However, ~~an individual who is mentally retarded and, because of an accompanying behavior disorder, is dangerous to others, as defined in G.S. 122C-3(11)b.,~~ no respondent found to be both mentally retarded and mentally ill may not be committed to a State, area or private facility for the mentally retarded. An individual who is mentally ill and dangerous to ~~himself, self,~~ as defined in G.S. 122C-3(11)a., or others, as defined in G.S. 122C-3(11)b., may also be committed to a combination of inpatient and outpatient commitment at both a 24-hour facility and an outpatient treatment physician or center for a period not in excess of 90 days. If the commitment proceedings were initiated as the result of the respondent's being charged with a violent crime, including a crime involving an assault with a deadly weapon, and the respondent was found incapable of proceeding, the commitment order shall so show. If the court orders inpatient commitment for a respondent who is under

an outpatient commitment order, the outpatient commitment is terminated; and the clerk of the superior court of the county where the district court hearing is held shall send a notice of the inpatient commitment to the clerk of superior court where the outpatient commitment was being supervised.

- (3) If the court does not find that the respondent meets either of the commitment criteria set out in subdivisions (1) and (2) of this subsection, the respondent shall be discharged, and the facility in which ~~he~~ the respondent was last a client so notified.
- (4) Before ordering any outpatient commitment, the court shall make findings of fact as to the availability of outpatient treatment. The court shall also show on the order the outpatient treatment physician or center who is to be responsible for the management and supervision of the respondent's outpatient commitment. When an outpatient commitment order is issued for a respondent held in a 24-hour facility, the court may order the respondent held at the facility for no more than 72 hours in order for the facility to notify the designated outpatient treatment physician or center of the treatment needs of the respondent. The clerk of court in the county where the facility is located shall send a copy of the outpatient commitment order to the designated outpatient treatment physician or center. If the outpatient commitment will be supervised in a county other than the county where the commitment originated, the court shall order venue for further court proceedings to be transferred to the county where the outpatient commitment will be supervised. Upon an order changing venue, the clerk of superior court in the county where the commitment originated shall transfer the file to the clerk of superior court in the county where the outpatient commitment is to be supervised."

Sec. 14. The Mental Health Study Commission shall examine the entire civil commitment process with the goal of placing full responsibility for involuntary commitments on area mental health, developmental disabilities, and substance abuse authorities, in accordance with due process, and of improving quality outcomes in crisis services. The Commission shall report its findings, together with draft legislation and cost analyses, to the 1997 General Assembly by March 1, 1997.

Sec. 15. Nothing in this act shall require hospitals licensed under G.S. 131E or G.S. 122C to contract with area mental health, developmental disabilities, and substance abuse authorities to provide inpatient or outpatient treatment for persons who are mentally retarded with mental illness.

Sec. 16. This act becomes effective January 1, 1997, and applies to commitments on or after that date.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

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Dennis A. Wicker  
President of the Senate

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Harold J. Brubaker  
Speaker of the House of Representatives