

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 489

Short Title: Mental Health Law Change.

(Public)

Sponsors: Senator Harris.

Referred to: Human Resources.

March 20, 1989

A BILL TO BE ENTITLED  
AN ACT TO CHANGE THE MENTAL HEALTH LAW TO REFLECT THE  
INCORPORATION OF DEVELOPMENTAL DISABILITIES.

The General Assembly of North Carolina enacts:

Section 1. The title of Chapter 122C of the General Statutes reads as  
rewritten:

"CHAPTER 122C.

**"MENTAL HEALTH, ~~MENTAL RETARDATION,~~ DEVELOPMENTAL  
DISABILITIES,**

**AND**

**SUBSTANCE ABUSE ACT OF 1985."**

Sec. 2. Article 1 of Chapter 122C of the General Statutes reads as rewritten:

**"ARTICLE 1.**

**"GENERAL PROVISIONS.**

**"§ 122C-1. Short title.**

This Chapter may be cited as the Mental Health, ~~Mental Retardation,~~ Developmental  
Disabilities, and Substance Abuse Act of 1985.

**"§ 122C-2. Policy.**

The policy of the State is to assist individuals with mental illness, ~~mental retardation,~~  
developmental disabilities, and substance abuse problems in ways consistent with the  
dignity, rights, and responsibilities of all North Carolina citizens. Within available  
resources it is the obligation of State and local government to provide services to  
eliminate, reduce, or prevent the disabling effects of mental illness, ~~mental retardation,~~  
developmental disabilities, and substance abuse through a service delivery system

1 designed to meet the needs of clients in the least restrictive available setting, if the least  
2 restrictive setting is therapeutically most appropriate, and to maximize their quality of  
3 life.

4 State and local governments shall develop and maintain a unified system of services  
5 centered in area programs. The public service system will strive to provide a continuum  
6 of services for clients while considering the availability of services in the private sector.

7 The furnishing of services to implement the policy of this section requires the  
8 cooperation and financial assistance of counties, the State, and the federal government.

9 **"§ 122C-3. Definitions.**

10 As used in this Chapter, unless another meaning is specified or the context clearly  
11 requires otherwise, the following terms have the meanings specified:

- 12 (1) 'Area authority' means the area mental health, ~~mental-retardation,~~  
13 developmental disabilities, and substance abuse authority.
- 14 (2) 'Area board' means the area mental health, ~~mental-retardation,~~  
15 developmental disabilities, and substance abuse board.
- 16 (3) 'Camp Butner reservation' means the original Camp Butner reservation  
17 as may be designated by the Secretary as having been acquired by the  
18 State and includes not only areas which are owned and occupied by the  
19 State but also those which may have been leased or otherwise disposed  
20 of by the State.
- 21 (4) 'City' has the same meaning as in G.S. 153A-1(1).
- 22 (5) 'Catchment area' means the geographic part of the State served by a  
23 specific area authority.
- 24 (6) 'Client' means an individual who is admitted to and receiving service  
25 from, or who in the past had been admitted to and received services  
26 from, a facility.
- 27 (7) 'Client advocate' means a person whose role is to monitor the  
28 protection of client rights or to act as an individual advocate on behalf  
29 of a particular client in a facility.
- 30 (8) 'Commission' means the Commission for Mental Health, ~~Mental~~  
31 ~~Retardation,~~ Developmental Disabilities, and Substance Abuse  
32 Services, established under Part 4 of Article 3 of Chapter 143B of the  
33 General Statutes.
- 34 (9) 'Confidential information' means any information, whether recorded or  
35 not, relating to an individual served by a facility that was received in  
36 connection with the performance of any function of the facility.  
37 'Confidential information' does not include statistical information from  
38 reports and records or information regarding treatment or services  
39 which is shared for training, treatment, habilitation, or monitoring  
40 purposes that does not identify clients either directly or by reference to  
41 publicly known or available information.
- 42 (10) 'County of residence' of a client means the county of his domicile at  
43 the time of his admission or commitment to a facility. A county of

1 residence is not changed because an individual is temporarily out of  
2 his county in a facility or otherwise.

3 (11) 'Dangerous to himself or others' means:

4 a. 'Dangerous to himself' means that within the recent past:

5 1. The individual has acted in such a way as to show:

6 I. That he would be unable, without care,  
7 supervision, and the continued assistance of  
8 others not otherwise available, to exercise self-  
9 control, judgment, and discretion in the conduct  
10 of his daily responsibilities and social relations, or  
11 to satisfy his need for nourishment, personal or  
12 medical care, shelter, or self-protection and  
13 safety; and

14 II. That there is a reasonable probability of his  
15 suffering serious physical debilitation within the  
16 near future unless adequate treatment is given  
17 pursuant to this Chapter. A showing of behavior  
18 that is grossly irrational, of actions that the  
19 individual is unable to control, of behavior that is  
20 grossly inappropriate to the situation, or of other  
21 evidence of severely impaired insight and  
22 judgment shall create a prima facie inference that  
23 the individual is unable to care for himself; or

24 2. The individual has attempted suicide or threatened  
25 suicide and that there is a reasonable probability of  
26 suicide unless adequate treatment is given pursuant to  
27 this Chapter; or

28 3. The individual has mutilated himself or attempted to  
29 mutilate himself and that there is a reasonable  
30 probability of serious self-mutilation unless adequate  
31 treatment is given pursuant to this Chapter.

32 Previous episodes of dangerousness to self, when applicable,  
33 may be considered when determining reasonable probability of  
34 physical debilitation, suicide, or self-mutilation.

35 b. 'Dangerous to others' means that within the recent past, the  
36 individual has inflicted or attempted to inflict or threatened to  
37 inflict serious bodily harm on another, or has acted in such a  
38 way as to create a substantial risk of serious bodily harm to  
39 another, or has engaged in extreme destruction of property; and  
40 that there is a reasonable probability that this conduct will be  
41 repeated. Previous episodes of dangerousness to others, when  
42 applicable, may be considered when determining reasonable  
43 probability of future dangerous conduct.

- 1 (12) 'Department' means the North Carolina Department of Human  
2 Resources.
- 3 (12a) 'Developmental disability' means a severe, chronic disability of a  
4 person which:
- 5 a. Is attributable to a mental or physical impairment or  
6 combination of mental and physical impairments;
- 7 b. Is manifested before the person attains age 22, unless the  
8 disability is caused by a traumatic head injury and is manifested  
9 after age 22;
- 10 c. Is likely to continue indefinitely;
- 11 d. Results in substantial functional limitations in three or more of  
12 the following areas of major life activity: self-care, receptive  
13 and expressive language, capacity for independent living,  
14 learning, mobility, self-direction and economic self-sufficiency;  
15 and
- 16 e. Reflects the person's need for a combination and sequence of  
17 special interdisciplinary, or generic care, treatment, or other  
18 services which are of a lifelong or extended duration and are  
19 individually planned and ~~coordinated~~ coordinated; or
- 20 f. When applied to children from birth through four years of age,  
21 evidences a developmental delay.
- 22 (13) 'Division' means the Division of Mental Health, ~~Mental Retardation~~  
23 Developmental Disabilities, and Substance Abuse Services of the  
24 Department.
- 25 (13a) 'Eligible psychologist' means a licensed practicing psychologist  
26 who has at least two years' clinical experience.
- 27 (14) 'Facility' means any person at one location whose primary purpose  
28 is to provide services for the care, treatment, habilitation, or  
29 rehabilitation of the mentally ill, ~~the mentally retarded,~~ the  
30 developmentally disabled, or substance abusers, and includes:
- 31 a. An 'area facility', which is a facility that is operated by or under  
32 contract with the area authority. A facility that is providing  
33 services under contract with the area authority is an area facility  
34 for purposes of the contracted services only. Area facilities may  
35 also be licensable facilities in accordance with Article 2 of this  
36 Chapter. A State facility is not an area facility;
- 37 b. A 'licensable facility', which is a facility that provides services  
38 for one or more minors or for two or more adults. When the  
39 services offered are provided to individuals who are mentally ill  
40 or ~~mentally retarded,~~ developmentally disabled, these services  
41 shall be day services offered to the same individual for a period  
42 of three hours or more during a 24-hour period, or residential  
43 services provided for 24 consecutive hours or more. When the  
44 services offered are provided to individuals who are substance

1 abusers, these services shall include all outpatient services, day  
 2 services offered to the same individual for a period of three  
 3 hours or more during a 24-hour period, or residential services  
 4 provided for 24 consecutive hours or more. Facilities for  
 5 individuals who are substance abusers include chemical  
 6 dependency facilities;

- 7 c. A 'private facility', which is a facility that is either a licensable  
 8 facility or a special unit of a general hospital or a part of either  
 9 in which the specific service provided is not covered under the  
 10 terms of a contract with an area authority;
- 11 d. The psychiatric service of North Carolina Memorial Hospital;
- 12 e. A 'residential facility', which is a 24-hour facility that is not a  
 13 hospital, including a group home;
- 14 f. A 'State facility', which is a facility that is operated by the  
 15 Secretary;
- 16 g. A '24-hour facility', which is a facility that provides a  
 17 structured living environment and services for a period of 24  
 18 consecutive hours or more and includes hospitals that are  
 19 facilities under this Chapter; and
- 20 h. A Veterans Administration facility or part thereof that provides  
 21 services for the care, treatment, habilitation, or rehabilitation of  
 22 the mentally ill, the ~~mental-retarded~~, developmentally disabled,  
 23 or substance abusers.

24 ~~For the purposes of Articles 2 and 3 of this Chapter only, excluding~~  
 25 ~~G.S. 122C-63, 'facility' also means any person at one location, whose~~  
 26 ~~primary purpose is to provide services for the care, treatment,~~  
 27 ~~habilitation, or rehabilitation for individuals with developmental~~  
 28 ~~disabilities, developed under the authority of this Chapter.~~

- 29 (15) 'Guardian' means a person appointed as a guardian of the person or  
 30 general guardian by the court under Chapters 7A, 33, or 35 of the  
 31 General Statutes.
- 32 (16) 'Habilitation' means training, care, and specialized therapies  
 33 undertaken to assist a client in maintaining his current level of  
 34 functioning or in achieving progress in developmental skills areas.
- 35 (17) 'Incompetent adult' means an adult individual adjudicated  
 36 incompetent.
- 37 (18) 'Intoxicated' means the condition of an individual whose mental or  
 38 physical functioning is presently substantially impaired as a result  
 39 of the use of alcohol or other substance.
- 40 (19) 'Law-enforcement officer' means sheriff, deputy sheriff, police  
 41 officer, State highway patrolman, or an officer employed by a city  
 42 or county under G.S. 122C-302.
- 43 (20) 'Legally responsible person' means: (i) when applied to an adult,  
 44 who has been adjudicated incompetent, a guardian; or (ii) when

- 1 applied to a minor, a parent, guardian, a person standing in loco  
2 parentis, or a legal custodian other than a parent who has been  
3 granted specific authority by law or in a custody order to consent  
4 for medical care, including psychiatric treatment.
- 5 (21) 'Mental illness' means: (i) when applied to an adult, an illness  
6 which so lessens the capacity of the individual to use self-control,  
7 judgment, and discretion in the conduct of his affairs and social  
8 relations as to make it necessary or advisable for him to be under  
9 treatment, care, supervision, guidance, or control; and (ii) when  
10 applied to a minor, a mental condition, other than mental  
11 retardation alone, that so lessens or impairs the youth's capacity  
12 either to develop or exercise age appropriate or age adequate self-  
13 control, judgment, or initiative in the conduct of his activities and  
14 social relationships as to make it necessary or advisable for him to  
15 be under treatment, care, supervision, guidance, or control.
- 16 (22) 'Mental retardation' means significantly subaverage general  
17 intellectual functioning existing concurrently with deficits in  
18 adaptive behavior and manifested before age 22.
- 19 (23) 'Mentally retarded with accompanying behavior disorder' means an  
20 individual who is mentally retarded and who has a pattern of  
21 maladaptive behavior that is recognizable no later than adolescence  
22 and is characterized by gross outbursts of rage or physical  
23 aggression against other individuals or property.
- 24 (24) 'Next of kin' means the individual designated in writing by the  
25 client or his legally responsible person upon the client's acceptance  
26 at a facility; provided that if no such designation has been made,  
27 'next of kin' means the client's spouse or nearest blood relation in  
28 accordance with G.S. 104A-1.
- 29 (25) 'Operating costs' means expenditures made by an area authority in  
30 the delivery of services for mental health, ~~mental retardation,~~  
31 developmental disabilities, and substance abuse as provided in this  
32 Chapter and includes the employment of legal counsel on a  
33 temporary basis to represent the interests of the area authority.
- 34 (26) Repealed by Session Laws 1987, c. 345, s. 1.
- 35 (27) 'Outpatient treatment' as used in Part 7 of Article 5 means  
36 treatment in an outpatient setting and may include medication,  
37 individual or group therapy, day or partial day programming  
38 activities, services and training including educational and  
39 vocational activities, supervision of living arrangements, and any  
40 other services prescribed either to alleviate the individual's illness  
41 or disability, to maintain semi-independent functioning, or to  
42 prevent further deterioration that may reasonably be predicted to  
43 result in the need for inpatient commitment to a 24-hour facility.

- 1 (28) 'Person' means any individual, firm, partnership, corporation,  
2 company, association, joint stock association, agency, or area  
3 authority.
- 4 (29) 'Physician' means an individual licensed to practice medicine in  
5 North Carolina under Chapter 90 of the General Statutes or a  
6 licensed medical doctor employed by the Veterans Administration.
- 7 (30) 'Provider of support services' means a person that provides to a  
8 facility support services such as data processing, dosage  
9 preparation, laboratory analyses, or legal, medical, accounting, or  
10 other professional services, including human services.
- 11 (30a) 'Psychologist' means an individual licensed to practice  
12 psychology under Chapter 90. The term 'eligible psychologist' is  
13 defined in subdivision (13a).
- 14 (31) 'Qualified professional' means any individual with appropriate training  
15 or experience as specified by the General Statutes or by rule of the  
16 Commission in the fields of mental health or ~~mental retardation or~~  
17 developmental disabilities or substance abuse treatment or habilitation,  
18 including physicians, psychologists, psychological associates,  
19 educators, social workers, registered nurses, and certified counselors.
- 20 (32) 'Responsible professional' means an individual within a facility who is  
21 designated by the facility director to be responsible for the care,  
22 treatment, habilitation, or rehabilitation of a specific client and who is  
23 eligible to provide care, treatment, habilitation, or rehabilitation  
24 relative to the client's disability.
- 25 (33) 'Secretary' means the Secretary of the Department.
- 26 (34) 'Single portal of entry and exit policy' means an admission and  
27 discharge policy for State and area facilities that may be adopted by an  
28 area authority and shall be approved by the Secretary before it is in  
29 force. The policy and its provisions shall be designed to promote  
30 quality client care in and among State and area facilities. Furthermore,  
31 the policy shall be designed to integrate otherwise independent  
32 facilities into a unified and coordinated system, in which system the  
33 area authority shall be responsible for assuring that the individual  
34 client can receive services from the facility that is best able to meet his  
35 needs. However, the policy may not be inconsistent with any other  
36 provisions of the General Statutes, nor may the policy include the  
37 complete exclusion of clients from admission to any specific State or  
38 area facility.
- 39 (35) 'Single portal area' means the county or counties that comprise the  
40 catchment area of an area authority that has adopted a single portal of  
41 entry and exit policy.
- 42 (36) 'Substance abuse' means the pathological use or abuse of alcohol or  
43 other drugs in a way or to a degree that produces an impairment in

1 personal, social, or occupational functioning. 'Substance abuse' may  
2 include a pattern of tolerance and withdrawal.

3 (37) 'Substance abuser' means an individual who engages in substance  
4 abuse.

5 **"§ 122C-4. Use of phrase 'client or his legally responsible person.'**

6 Except as otherwise provided by law, whenever in this Chapter the phrase 'client or  
7 his legally responsible person' is used, and the client is a minor or an incompetent adult,  
8 the duty or right involved shall be exercised not by the client, but by the legally  
9 responsible person."

10 Sec. 3. The title of Article 2 of Chapter 122C reads as rewritten:

11 **"ARTICLE 2.**

12 **"LICENSURE OF FACILITIES FOR THE MENTALLY ILL,**  
13 **THE MENTALLY RETARDED, DEVELOPMENTALLY DISABLED, AND**  
14 **SUBSTANCE**  
15 **ABUSERS."**

16 Sec. 4. G.S. 122C-21 reads as rewritten:

17 **"§ 122C-21. Purpose.**

18 The purpose of this Article is to provide for licensure of facilities for the mentally ill,  
19 ~~mentally retarded, developmentally disabled,~~ and substance abusers by the development,  
20 establishment, and enforcement of basic rules governing:

- 21 (1) The provision of services to individuals who receive services from  
22 licensable facilities as defined by this Chapter, and  
23 (2) The construction, maintenance, and operation of these licensable  
24 facilities that in the light of existing knowledge will ensure safe and  
25 adequate treatment of these individuals."

26 Sec. 5. G.S. 122C-22(a) reads as rewritten:

27 "(a) The following are excluded from the provisions of this Article and are not  
28 required to obtain licensure under this Article:

- 29 (1) Physicians and psychologists engaged in private office practice;  
30 (2) General hospitals licensed under Article 5 of Chapter 131E of the  
31 General Statutes, that operate special units for the mentally ill, ~~mentally~~  
32 ~~retarded, developmentally disabled,~~ or substance abusers;  
33 (3) State and federally-operated facilities;  
34 (4) Domiciliary care homes licensed under Chapter 31D of the General  
35 Statutes;  
36 (5) Developmental child day care centers licensed under Article 7 of  
37 Chapter 110 of the General Statutes;  
38 (6) Persons subject to licensure under rules of the Social Services  
39 Commission;  
40 (7) Persons subject to rules and regulations of the Division of Vocational  
41 Rehabilitation Services; and  
42 (8) Facilities that provide occasional respite care for not more than two  
43 individuals at a time; provided that the primary purpose of the facility  
44 is other than as defined in G.S. 122C-3(14)."



1           Sec. 6. G.S. 122C-23(a) reads as rewritten:

2           "(a) No person shall establish, maintain, or operate a licensable facility for the  
3 mentally ill, ~~mentally retarded~~ developmentally disabled, or substance abusers without a  
4 current license issued by the Secretary."

5           Sec. 7. G.S. 122C-51 reads as rewritten:

6 **"§ 122C-51. Declaration of policy on clients' rights.**

7           It is the policy of the State to assure basic human rights to each client of a facility.  
8 These rights include the right to dignity, privacy, humane care, and freedom from  
9 mental and physical abuse, neglect, and exploitation. Each facility shall assure to each  
10 client the right to live as normally as possible while receiving care and treatment.

11           It is further the policy of this State that each client who is admitted to and is  
12 receiving services from a facility has the right to treatment, including access to medical  
13 care and habilitation, regardless of age or degree of mental illness, ~~mental retardation~~,  
14 developmental disabilities, or substance abuse. Each client has the right to an  
15 individualized written treatment or habilitation plan setting forth a program to maximize  
16 the development or restoration of his capabilities."

17           Sec. 8. G.S.122C-55(c) reads as rewritten:

18           "(c) A facility may furnish confidential information in its possession to the  
19 Department of Correction when requested by that department regarding any client of  
20 that facility when the inmate has been determined by the Department of Correction to be  
21 in need of treatment for mental illness, ~~mental retardation~~, developmental disabilities, or  
22 substance abuse. The Department of Correction may furnish to a facility confidential  
23 information in its possession about treatment for mental illness, ~~mental retardation~~,  
24 developmental disabilities, or substance abuse that the Department of Correction has  
25 provided to any present or former inmate if the inmate is presently seeking treatment  
26 from the requesting facility or if the inmate has been involuntarily committed to the  
27 requesting facility for inpatient or outpatient treatment. Under the circumstances  
28 described in this subsection, the consent of the client or inmate shall not be required in  
29 order for this information to be furnished and the information shall be furnished despite  
30 objection by the client or inmate. Confidential information disclosed pursuant to this  
31 subsection is restricted from further disclosure."

32           Sec. 9. G.S. 122C-56(b) reads as rewritten:

33           "(b) The Secretary may have access to confidential information from private or  
34 public agencies or agents for purposes of research and evaluation in the areas of mental  
35 health, ~~mental retardation~~, developmental disabilities, and substance abuse. No  
36 confidential information shall be further disclosed."

37           Sec. 10. G.S. 122C-62 reads as rewritten:

38 **"§ 122C-62. Additional rights in 24-hour facilities.**

39           (a) In addition to the rights enumerated in G.S. 122C-51 through G.S. 122C-61,  
40 each adult client who is receiving treatment or habilitation in a 24-hour facility keeps  
41 the right to:

42           (1) Send and receive sealed mail and have access to writing material,  
43 postage, and staff assistance when necessary;

1           (2)    Contact and consult with, at his own expense and at no cost to the  
2                facility, legal counsel, private physicians, and private mental health,  
3                ~~mental retardation, developmental disabilities,~~ or substance abuse  
4                professionals of his choice; and

5           (3)    Contact and consult with a client advocate if there is a client advocate.  
6    The rights specified in this subsection may not be restricted by the facility and each  
7    adult client may exercise these rights at all reasonable times.

8           (b)    Except as provided in subsections (e) and (h) of this section, each adult client  
9    who is receiving treatment or habilitation in a 24-hour facility at all times keeps the  
10   right to:

11           (1)    Make and receive confidential telephone calls. All long distance calls  
12                shall be paid for by the client at the time of making the call or made  
13                collect to the receiving party;

14           (2)    Receive visitors between the hours of 8:00 a.m. and 9:00 p.m. for a  
15                period of at least six hours daily, two hours of which shall be after 6:00  
16                p.m.; however visiting shall not take precedence over therapies;

17           (3)    Communicate and meet under appropriate supervision with individuals  
18                of his own choice upon the consent of the individuals;

19           (4)    Make visits outside the custody of the facility unless:  
20                a.    Commitment proceedings were initiated as the result of the  
21                    client's being charged with a violent crime, including a crime  
22                    involving an assault with a deadly weapon, and the respondent  
23                    was found not guilty by reason of insanity or incapable of  
24                    proceeding;  
25                b.    The client was voluntarily admitted or committed to the facility  
26                    while under order of commitment to a correctional facility of  
27                    the Department of Correction; or  
28                c.    The client is being held to determine capacity to proceed  
29                    pursuant to G.S. 15A-1002;

30                A court order may expressly authorize visits otherwise prohibited by  
31                the existence of the conditions prescribed by this subdivision;

32           (5)    Be out of doors daily and have access to facilities and equipment for  
33                physical exercise several times a week;

34           (6)    Except as prohibited by law, keep and use personal clothing and  
35                possessions;

36           (7)    Participate in religious worship;

37           (8)    Keep and spend a reasonable sum of his own money;

38           (9)    Retain a driver's license, unless otherwise prohibited by Chapter 20 of  
39                the General Statutes; and

40           (10)   Have access to individual storage space for his private use.

41           (c)    In addition to the rights enumerated in G.S. 122C-51 through G.S. 122C-57  
42    and G.S. 122C-59 through G.S. 122C-61, each minor client who is receiving treatment  
43    or habilitation in a 24-hour facility has the right to have access to proper adult  
44    supervision and guidance. In recognition of the minor's status as a developing

1 individual, the minor shall be provided opportunities to enable him to mature physically,  
2 emotionally, intellectually, socially, and vocationally. In view of the physical,  
3 emotional, and intellectual immaturity of the minor, the 24-hour facility shall provide  
4 appropriate structure, supervision and control consistent with the rights given to the  
5 minor pursuant to this Article. The facility shall also, where practical, make reasonable  
6 efforts to ensure that each minor client receives treatment apart and separate from adult  
7 clients unless the treatment needs of the minor client dictate otherwise.

8 Each minor client who is receiving treatment or habilitation from a 24-hour facility  
9 has the right to:

- 10 (1) Communicate and consult with his parents or guardian or the agency  
11 or individual having legal custody of him;
- 12 (2) Contact and consult with, at his own expense or that of his legally  
13 responsible person and at no cost to the facility, legal counsel, private  
14 physicians, private mental health, ~~mental retardation,~~ developmental  
15 disabilities, or substance abuse professionals, of his or his legally  
16 responsible person's choice; and
- 17 (3) Contact and consult with a client advocate, if there is a client advocate.

18 The rights specified in this subsection may not be restricted by the facility and each  
19 minor client may exercise these rights at all reasonable times.

20 (d) Except as provided in subsections (e) and (h) of this section, each minor  
21 client who is receiving treatment or habilitation in a 24-hour facility has the right to:

- 22 (1) Make and receive telephone calls. All long distance calls shall be paid  
23 for by the client at the time of making the call or made collect to the  
24 receiving party;
- 25 (2) Send and receive mail and have access to writing materials, postage,  
26 and staff assistance when necessary;
- 27 (3) Under appropriate supervision, receive visitors between the hours of  
28 8:00 a.m. and 9:00 p.m. for a period of at least six hours daily, two  
29 hours of which shall be after 6:00 p.m.; however visiting shall not take  
30 precedence over school or therapies;
- 31 (4) Receive special education and vocational training in accordance with  
32 federal and State law;
- 33 (5) Be out of doors daily and participate in play, recreation, and physical  
34 exercise on a regular basis in accordance with his needs;
- 35 (6) Except as prohibited by law, keep and use personal clothing and  
36 possessions under appropriate supervision;
- 37 (7) Participate in religious worship;
- 38 (8) Have access to individual storage space for the safekeeping of personal  
39 belongings;
- 40 (9) Have access to and spend a reasonable sum of his own money; and
- 41 (10) Retain a driver's license, unless otherwise prohibited by Chapter 20 of  
42 the General Statutes.

43 (e) No right enumerated in subsections (b) or (d) of this section may be limited or  
44 restricted except by the qualified professional responsible for the formulation of the

1 client's treatment or habilitation plan. A written statement shall be placed in the client's  
2 record that indicates the detailed reason for the restriction. The restriction shall be  
3 reasonable and related to the client's treatment or habilitation needs. A restriction is  
4 effective for a period not to exceed 30 days. An evaluation of each restriction shall be  
5 conducted by the qualified professional at least every seven days, at which time the  
6 restriction may be removed. Each evaluation of a restriction shall be documented in the  
7 client's record. Restrictions on rights may be renewed only by a written statement  
8 entered by the qualified professional in the client's record that states the reason for the  
9 renewal of the restriction. In the case of an adult client who has not been adjudicated  
10 incompetent, in each instance of an initial restriction or renewal of a restriction of rights,  
11 an individual designated by the client shall, upon the consent of the client, be notified of  
12 the restriction and of the reason for it. In the case of a minor client or an incompetent  
13 adult client, the legally responsible person shall be notified of each instance of an initial  
14 restriction or renewal of a restriction of rights and of the reason for it. Notification of  
15 the designated individual or legally responsible person shall be documented in writing  
16 in the client's record.

17 (f) The Commission may adopt rules to implement subsection (e) of this section.

18 (g) With regard to clients being held to determine capacity to proceed pursuant to  
19 G.S. 15A-1002 or clients in a facility for substance abuse, and notwithstanding the prior  
20 provisions of this section, the Commission may adopt rules restricting the rights set  
21 forth under (b) (2) and (d) (3) of this section if restrictions are necessary and reasonable  
22 in order to protect the health, safety, and welfare of the client involved or other clients.

23 (h) The rights stated in subdivisions (b) (2), (b) (4), (b) (5), (b) (10), (d) (3), (d)  
24 (5) and (d) (8) may be modified in a general hospital by that hospital to be the same as  
25 for other patients in that hospital; provided that any restriction of a specific client's  
26 rights shall be done in accordance with the provisions of subsection (e) of this section."

27 Sec. 11. G.S. 122C-65(a) reads as rewritten:

28 "(a) For the protection of clients receiving treatment or habilitation in a 24-hour  
29 facility, it is unlawful for any individual who is not a ~~mentally retarded~~ developmentally  
30 disabled client in a facility:

- 31 (1) To assist, advise, or solicit, or to offer to assist, advise, or solicit a  
32 client of a facility to leave without authority;
- 33 (2) To transport or to offer to transport a client of a facility to or from any  
34 place without the facility's authority;
- 35 (3) To receive or to offer to receive a minor client of a facility into any  
36 place, structure, building, or conveyance for the purpose of engaging  
37 in any act that would constitute a sex offense, or to solicit a minor  
38 client of a facility to engage in any act that would constitute a sex  
39 offense;
- 40 (4) To hide an individual who has left a facility without authority; or
- 41 (5) To engage in, or offer to engage in an act with a client of a facility that  
42 would constitute a sex offense."

43 Sec. 12. The title of Article 4 of Chapter 122C of the General Statutes reads  
44 as rewritten:

1 "ARTICLE 4.  
2 "ORGANIZATION AND SYSTEM FOR DELIVERY OF MENTAL HEALTH,  
3 ~~MENTAL~~  
4 ~~RETARDATION, DEVELOPMENTAL DISABILITIES,~~  
5 ~~AND SUBSTANCE ABUSE SERVICES."~~

6 Sec. 13. G.S. 122C-101 reads as rewritten:

7 **"§ 122C-101. Policy.**

8 Within the public system of mental health, ~~mental retardation,~~ developmental  
9 disabilities, and substance abuse services, there are both area and State facilities. An  
10 area authority is the locus of coordination among public services for clients of its  
11 catchment area. To assure the most appropriate and efficient care of clients within the  
12 publicly supported service system, area authorities are encouraged to develop and  
13 secure approval for a single portal of entry and exit policy for their catchment areas."

14 Sec. 14. Part 2 of Article 4 of Chapter 122C of the General Statutes reads as  
15 rewritten:

16 **"PART 2. STATE, COUNTY AND AREA AUTHORITY.**

17 **"§ 122C-111. Administration.**

18 The Secretary shall administer and enforce the provisions of this Chapter and the  
19 rules of the Commission and shall operate State facilities. An area director shall  
20 administer the programs of the area authority and enforce the rules of the area board,  
21 applicable State laws, rules of the Commission, and rules of the Secretary. The  
22 Secretary in cooperation with area directors and State facility directors shall provide for  
23 the coordination of services between area authorities and State facilities.

24 **"§ 122C-112. Powers and duties of the Secretary.**

25 (a) The Secretary shall:

- 26 (1) Enforce the provisions of this Chapter and the rules of the Commission  
27 and the Secretary;
- 28 (2) Assist counties and area authorities in the establishment and operation  
29 of community-based programs within catchment areas specified in  
30 rules adopted by the Commission;
- 31 (3) Operate State facilities and adopt rules pertaining to their operation;
- 32 (4) Promote a unified system of services for the citizens of this State by  
33 coordinating services provided in State facilities and area facilities;
- 34 (5) Approve the plans and budgets of an area authority and adopt rules  
35 pertaining to the content and format of these plans and budgets;
- 36 (6) Adopt rules governing the expenditure of all area authority funds;
- 37 (7) Adopt rules for the establishment of single portal designation and  
38 approve an area as a single portal area;
- 39 (8) Except as provided in G.S. 122C-26(4), adopt rules establishing  
40 procedures for waiver of rules adopted by the Secretary under this  
41 Chapter.
- 42 (9) Notify the clerks of superior court of changes in the designation of  
43 State facility regions and of facilities designated under G.S. 122C-252;

- 1 (10) Promote public awareness and understanding of mental health, mental  
2 illness, ~~mental retardation,~~ developmental disabilities, and substance  
3 abuse;
- 4 (11) Administer and enforce rules that are conditions of participation in  
5 federal or State financial aid; and
- 6 (12) Carry out G.S. 122C-361.
- 7 (b) The Secretary may:
- 8 (1) Acquire by purchase or otherwise in the name of the Department  
9 equipment, supplies, and other personal property necessary to carry out  
10 the mental health, ~~mental retardation,~~ developmental disabilities, and  
11 substance abuse programs;
- 12 (2) Sponsor training opportunities in the fields of mental health, ~~mental~~  
13 ~~retardation,~~ developmental disabilities, and substance abuse;
- 14 (3) Promote and conduct research in the fields of mental health, ~~mental~~  
15 ~~retardation,~~ developmental disabilities, and substance abuse;
- 16 (4) Provide technical assistance for the development and improvement of  
17 prevention services;
- 18 (5) Receive donations of money, securities, equipment, supplies, or any  
19 other personal property of any kind or description which shall be used  
20 by the Secretary for the purpose of carrying out mental health, ~~mental~~  
21 ~~retardation,~~ developmental disabilities, and substance abuse programs.  
22 Any donations shall be reported to the Office of State Budget and  
23 Management as determined by that office;
- 24 (6) Accept, allocate, and spend any federal funds for mental health, ~~mental~~  
25 ~~retardation,~~ developmental disabilities, and substance abuse activities  
26 that may be made available to the State by the federal government.  
27 This Chapter shall be liberally construed in order that the State and its  
28 citizens may benefit fully from these funds. Any federal funds  
29 received shall be deposited with the State Treasurer and shall be  
30 appropriated by the General Assembly for the mental health, ~~mental~~  
31 ~~retardation,~~ developmental disabilities, or substance abuse purposes  
32 specified;
- 33 (7) Enter agreements authorized by G.S. 122C-346.
- 34 (8) Accept, allocate, and spend funds from the United States Department  
35 of Defense to operate mental health demonstration projects for families  
36 of the uniformed services. Demonstration projects shall be operated  
37 through an area authority. The operation of these demonstration  
38 projects may be accomplished through subcontracts with one or more  
39 private sector providers.

40 **"§ 122C-113. Cooperation between Secretary and other agencies.**

- 41 (a) The Secretary shall cooperate with other State agencies to coordinate services  
42 for the treatment and habilitation of individuals who are mentally ill, ~~mentally retarded,~~  
43 developmentally disabled, or substance abusers. The Secretary shall also coordinate

1 with these agencies to provide public education to promote a better understanding of  
2 mental illness, ~~mental retardation,~~ developmental disabilities, and substance abuse.

3 (b) The Secretary shall promote cooperation among area facilities, State  
4 facilities, and local agencies to facilitate the provision of services to individuals who are  
5 mentally ill, ~~mentally retarded,~~ developmentally disabled, or substance abusers.

6 (b1) The Secretary shall cooperate with the State Board of Education in  
7 coordinating the responsibilities of the Department of Human Resources and of the  
8 Department of Public Education for adolescent substance abuse programs. The  
9 Department of Human Resources, through its Division of Mental Health, ~~Mental~~  
10 ~~Retardation,~~ Developmental Disabilities, and Substance Abuse Services, shall be  
11 responsible for intervention and treatment in non-school based programs. The  
12 Department of Public Education shall have primary responsibility for in-school  
13 education, identification, and intervention services, including student assistance  
14 programs.

15 (c) The Secretary shall adopt rules to assure this coordination.

16 **"§ 122C-114. Powers and duties of the Commission.**

17 The Commission shall have authority as provided by this Chapter, Chapters 90 and  
18 148 of the General Statutes, and by G.S. 143B-147.

19 **"§ 122C-115. Powers and duties of counties and cities.**

20 (a) Except as provided in G.S. 153A-77, a county shall provide mental health,  
21 ~~mental retardation,~~ developmental disabilities, and substance abuse services through an  
22 area authority.

23 (b) Counties and cities may appropriate funds for the support of programs that  
24 serve the catchment area, whether the programs are physically located within a single  
25 county or whether any facility housing a program is owned and operated by the city or  
26 county. Counties and cities may make appropriations for the purposes of this Chapter  
27 and may allocate for these purposes other revenues not restricted by law, and counties  
28 may fund them by levy of property taxes pursuant to G.S. 153A-149(c)(22).

29 (c) Within a catchment area designated by the Commission, a board of county  
30 commissioners or two or more boards of county commissioners jointly shall establish an  
31 area authority with the approval of the Secretary.

32 **"§ 122C-116. Status of area authority.**

33 An area authority is a local political subdivision of the State except that a single  
34 county area authority is considered a department of the county in which it is located for  
35 the purposes of Chapter 159 of the General Statutes.

36 **"§ 122C-117. Powers and duties of the area authority.**

37 (a) The area authority shall:

- 38 (1) Engage in comprehensive planning, budgeting, implementing, and  
39 monitoring of community-based mental health, ~~mental retardation,~~  
40 developmental disability, disabilities, and substance abuse services;
- 41 (2) Provide services to clients in the catchment area;
- 42 (3) Determine the needs of the area authority's clients and coordinate with  
43 the Secretary the provision of services to clients through area and State  
44 facilities;

- 1 (4) Develop plans and budgets for the area authority subject to the
- 2 approval of the Secretary;
- 3 (5) Assure that the services provided by the area authority meet the rules
- 4 of the Commission and Secretary;
- 5 (6) Comply with federal requirements as a condition of receipt of federal
- 6 grants; and
- 7 (7) Appoint an area director.

8 (b) The governing unit of the area authority is the area board. All powers, duties,  
9 functions, rights, privileges, or immunities conferred on the area authority may be  
10 exercised by the area board.

11 **"§ 122C-118. Structure of area board.**

12 (a) An area board shall have no less than 15 members and no more than 25  
13 members. The size of the area board may be changed from time to time as follows:

- 14 (1) In a single-county area, by the board of county commissioners;
- 15 (2) In a multi-county area by agreement of the boards of county
- 16 commissioners of all the counties in the catchment area. The
- 17 agreement shall be evidenced by concurrent resolutions adopted by the
- 18 affected boards of county commissioners.

19 (b) In a single county area, the board of county commissioners shall appoint the  
20 members of the area board who may be removed with or without cause.

21 (c) In areas consisting of more than one county, each board of county  
22 commissioners within the area shall appoint one commissioner as a member of the area  
23 board. These members shall appoint the other members. A member may be removed,  
24 with or without cause, by the group authorized to make the initial appointment.

25 (d) The group of county commissioners authorized to make appointments to the  
26 area board shall appoint new members to the area board to fill vacancies occurring on  
27 the board before the end of the appointed term of office. These appointments are for the  
28 rest of the unexpired term of office.

29 (e) Effective July 1, 1989, the area board shall include:

- 30 (1) At least one county commissioner from each county in the area except
- 31 that in a single-county area authority the board of commissioners may
- 32 instead appoint any resident of the county;
- 33 (2) At least ~~two physicians~~ one physician licensed under Chapter 90 of the
- 34 ~~General Statutes to practice medicine in North Carolina;~~
- 35 (3) At least one professional representative from the fields either of
- 36 psychology, social work, nursing, or religion;
- 37 (4) At least one individual ~~each representing the interests of or from citizens'~~
- 38 ~~organizations each, either a primary consumer or an individual from a~~
- 39 citizen's organization, representing the interests of individuals with:
  - 40 a. Mental illness;
  - 41 b. ~~Mental retardation;~~ Developmental disabilities; and
  - 42 e. ~~Alcoholism; and~~
  - 43 d. ~~Drug abuse;~~
  - 44 e. Substance abuse;



1 (5) ~~At least one representative from local hospitals or area planning~~  
2 ~~organizations—family consumer each, representing the interest of~~  
3 ~~individuals with:~~

4 a. Mental illness;

5 b. Developmental Disabilities;

6 c. Substance abuse; and

7 (6) At least one attorney licensed to practice in North Carolina.

8 Appointments of board members in newly designated categories shall be made as  
9 vacancies occur.

10 (f) Any member of an area board who is a county commissioner serves on the  
11 board in an ex officio capacity. The terms of county commissioners on an area board are  
12 concurrent with their terms as county commissioners. The terms of the other members  
13 on the area board shall be for four years, except that upon the initial formation of an  
14 area board one fourth shall be appointed for one year, one fourth for two years, one  
15 fourth for three years, and all remaining members for four years.

16 **"§ 122C-119. Organization of area board.**

17 (a) The area board shall meet at least six times per year.

18 (b) Meetings shall be called by the area board chairman or by three or more  
19 members of the board after notifying the area board chairman in writing.

20 (c) Members of the area board elect the board's chairman. The term of office of  
21 the area board chairman shall be one year. A county commissioner area board member  
22 may serve as the area board chairman.

23 **"§ 122C-120. Compensation of area board members.**

24 (a) Area board members may receive as compensation for their services per diem  
25 and a subsistence allowance for each day during which they are engaged in the official  
26 business of the area board. The amount of the per diem and subsistence allowances shall  
27 be established by the area board and the amounts shall not exceed those authorized by  
28 G.S. 138-5 for State boards.

29 (b) Area board members may be reimbursed for all necessary travel expenses and  
30 registration fees in amounts fixed by the board.

31 **"§ 122C-121. Area director.**

32 The area director is an employee of the area board and shall serve at the pleasure of  
33 the area board. The director is responsible for the staff appointments, for  
34 implementation of the policies and programs of the board in compliance with rules of  
35 the Commission and the Secretary, and for the supervision of all service programs and  
36 staff.

37 **"§ 122C-122. Public guardians.**

38 The officers and employees of the Division, or any successor agency, and the area  
39 director or any officer or employee of an area authority designated by the area board, or  
40 any officer or employee of any area facility designated by the area board, may, if they  
41 are a disinterested public agent as defined by G.S. 35A-1202(4), serve as guardians for  
42 adults adjudicated incompetent under the provisions of Subchapter I of Chapter 35A of  
43 the General Statutes, and they shall so act if ordered to serve in that capacity by the

1 clerk of superior court having jurisdiction of a proceeding brought under that  
2 Subchapter. Bond shall be required or purchased as provided by G.S. 35A-1239.

3 **"§ 122C-123. Other agency responsibility.**

4 Notwithstanding the provisions of G.S. 122C-112(a)(10) and G.S. 122C-117(a)(1),  
5 other agencies of the Department, other State agencies, and other local agencies shall  
6 continue responsibility for services they provide for persons with developmental  
7 disabilities.

8 Sec. 15. Part 3 of Article 4 of Chapter 122C of the General Statutes reads as  
9 rewritten:

10 **"PART 3. SERVICE DELIVERY SYSTEM.**

11 **"§ 122C-131. Composition of system.**

12 Mental health, ~~mental retardation,~~ developmental disabilities, and substance abuse  
13 services of the public system in this State shall be delivered through area authorities and  
14 State facilities.

15 **"§ 122C-132. Single portal of entry and exit designation.**

16 (a) The public system should provide for a single portal of entry and exit policy.  
17 In order to accomplish this objective, an area authority desiring designation as a single  
18 portal area shall present to the Secretary a single portal of entry and exit plan approved  
19 by the area board. The decision as to whether to choose to submit a plan is in the  
20 discretion of the area authority after weighing the policy goal stated in this subsection  
21 and in G.S. 122C-101.

22 (b) In order for a single portal area to be designated, the single portal of entry  
23 and exit plan shall be subject to approval by the Secretary. Once an area is designated  
24 by the Secretary as a single portal area, any changes to the plan shall be subject to  
25 approval by the Secretary. However, an approved plan and designation as a single portal  
26 area shall remain in force pending approval of any changes.

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

- 28 (1) A specific listing of facilities to be covered by the single portal of  
29 entry and exit plan;
- 30 (2) Procedures for review of individuals to be admitted to or discharged  
31 from State and area facilities;
- 32 (3) Procedures for shared responsibility when individuals are admitted  
33 directly to a State facility;
- 34 (4) Evidence of incorporation of these plans within the contracts between  
35 the area authority and the State facilities as required by G.S. 122C-  
36 143(c) and with other public and private agencies as required in G.S.  
37 122C-141;
- 38 (5) Evidence of cooperative arrangements with local law enforcement,  
39 local courts, and the local medical society; and
- 40 (6) Procedures for review of citizen complaints.

41 (d) Residents of a county in a designated single portal area shall be admitted to or  
42 discharged from State and area facilities through the area authority as described in the  
43 area's single portal of entry and exit policy."

44 Sec. 16. G.S. 122C-141(c) reads as rewritten:

1       "(c) The area authority may contract with a health maintenance organization,  
2 certified and operating in accordance with the provisions of Chapter 57B of the General  
3 Statutes for the area authority, to provide mental health, ~~mental-retardation,~~  
4 developmental disabilities, or substance abuse services to enrollees in a health care plan  
5 provided by the health maintenance organization. The terms of the contract must meet  
6 the requirements of all applicable State statutes and rules of the Commission and  
7 Secretary governing both the provision of services by an area authority and the general  
8 and fiscal operation of an area authority and the reimbursement rate for services  
9 rendered shall be based on the usual and customary charges paid by the health  
10 maintenance organization to similar providers. Any provision in conflict with a State  
11 statute or rule of the Commission or the Secretary shall be void; however, the presence  
12 of any void provision in that contract does not render void any other provision in that  
13 contract which is not in conflict with a State statute or rule of the Commission or the  
14 Secretary. Subject to approval by the Secretary and pending the timely reimbursement  
15 of the contractual charges, the area authority may expend funds for costs which may be  
16 incurred by the area authority as a result of providing the additional services under a  
17 contractual agreement with a health maintenance organization."

18           Sec. 17. G.S. 122C-147 reads as rewritten:

19       "**§ 122C-147. Allocation of funds to area authorities.**

20       (a) All State and federal funds appropriated within the Department's budget for  
21 area mental health, ~~mental-retardation,~~ developmental disabilities, and substance abuse  
22 services shall be allocated to area authorities in accordance with the annual plan and  
23 budget adopted by the area authority and approved by the Secretary. An area authority  
24 may receive and allocate non-State resources for capital purchases, capital  
25 improvements, and equipment acquisitions if the expenditures are made in the support  
26 of the annual plan. The final share of State and federal funds shall be allocated on the  
27 basis of actual expenditures and reported in a way prescribed by the Secretary. Unspent  
28 State and federal funds shall be remitted to the Department within 60 days after the date  
29 that a certified audit is rendered as required by the Local Government Commission. If  
30 an audit is not submitted to the State within five days of the due date for the audit as  
31 approved by the Local Government Commission, Department funds for the area  
32 authority may be withheld by the Secretary until the audit is submitted.

33       (b) Unless otherwise specified by the Secretary, State appropriations to area  
34 authorities shall be used exclusively for the operating costs of the area authority;  
35 provided however:

- 36           (1) The Secretary may specify that designated State funds may be used by  
37 area authorities (i) for the purchase, alteration, improvement, or  
38 rehabilitation of real estate to be used as a 24-hour and day facility or  
39 (ii) in contracting with a private, nonprofit corporation that operates  
40 24-hour and day facilities for the mentally ill, ~~mentally-retarded,~~  
41 developmentally disabled, or substance abusers and according to the  
42 terms of the contract between the area authority and the private,  
43 nonprofit corporation, for the purchase, alteration, improvement,  
44 rehabilitation of real estate or, to make a lump sum down payment or

1 periodic payments on a real property mortgage in the name of the  
2 private, nonprofit corporation.

3 (2) Upon cessation of the use of the 24-hour and day facility by the area  
4 authority, if operated by the area authority, or upon termination,  
5 default, or nonrenewal of the contract if operated by a contractual  
6 agency, the Department shall be reimbursed in accordance with rules  
7 adopted by the Secretary for the Department's participation in the  
8 purchase of the 24-hour and day facility.

9 (c) All real property purchased for use by the area authority shall be provided by  
10 local or federal funds unless otherwise allowed under subsection (b) of this section. The  
11 title to this real property and the authority to acquire it is held by the county where the  
12 property is located. The authority to hold title to real property and the authority to  
13 acquire it may be held by the area authority with the consent of the board or boards of  
14 commissioners of all the counties which comprise the area authority. The consent to this  
15 variation shall be by resolution of the affected board or boards of county commissioners  
16 and may have any necessary or proper conditions, including provisions for distribution  
17 of the proceeds in the event of disposition of the property by the area authority.

18 (d) The area authority may lease real property.

19 (e) Equipment necessary for the operation of the area authority may be obtained  
20 with local, State, federal, or donated funds, or a combination of these.

21 (f) The area authority may acquire or lease personal property, including by lease-  
22 purchase agreement. Title to personal property may be held by the area authority.

23 (g) All area authority funds shall be spent in accordance with the rules of the  
24 Secretary. Failure to comply with the rules is grounds for the Secretary to stop  
25 participation in the funding of the particular program. The Secretary may withdraw  
26 funds from a specific program of services not being administered in accordance with an  
27 approved plan and budget after written notice and subject to an appeal as provided by  
28 G.S. 122C-145 and Chapter 150B of the General Statutes.

29 (h) Notwithstanding subsection (b) of this section and in addition to the purposes  
30 listed in that subsection, the funds allocated by the Secretary for services for members  
31 of the class identified in Willie M., et al. vs. Hunt, et al. (C-C-79-294, Western District)  
32 may be used for the purchase, alteration, improvement, or rehabilitation of real property  
33 owned or to be owned by a nonprofit corporation and used or to be used as a facility.

34 (i) Notwithstanding subsection (c) of this section and in addition to the purposes  
35 listed in that subsection, funds allocated by the Secretary for services for members of  
36 the class identified in Willie M., et al. vs. Hunt, et al. (C-C-79-294, Western District)  
37 may be used for the purchase, alteration, improvement, or rehabilitation of real property  
38 used by an area authority as long as the title to the real property is vested in the county  
39 where the property is located or is vested in another governmental entity. If the property  
40 ceases to be used in accordance with the annual plan, the unamortized part of funds  
41 spent under this subsection for the purchase, alteration, improvement, or rehabilitation  
42 of real property shall be returned to the Department, in accordance with the rules of the  
43 Secretary.

1 (j) Notwithstanding subsection (c) of this section the area authority, with the  
2 approval of the Secretary, may use local funds for the alteration, improvement, and  
3 rehabilitation of real property owned by a nonprofit corporation under contract with the  
4 area authority and used or to be used as a 24-hour and day facility. Prior to the use of  
5 county appropriated funds for this purpose, the area authority must obtain consent of the  
6 board or boards of commissioners of all the counties which comprise the area authority.  
7 The consent shall be by resolution of the affected board or boards of county  
8 commissioners and may have any necessary or proper conditions, including provisions  
9 for distribution of the proceeds in the event of disposition of the property.”

10 Sec. 18. G.S. 122C-149 reads as rewritten:

11 **“§ 122C-149. Allocation of matching funds to area authorities.**

12 (a) State-appropriated matching funds shall be distributed subject to rules of the  
13 Secretary which set a formula based on the relative fiscal capacity of the county to fund  
14 mental health, ~~mental retardation,~~ developmental disabilities, and substance abuse  
15 services. The rules shall be reviewed biennially by the Secretary. Area authority funds  
16 used for matching State funds shall include fees from services including Medicare and  
17 the local and federal share of Medicaid receipts, fees from agencies under contract, gifts  
18 and donations, and county and municipal funds. Except as specifically provided, area  
19 financial participation to match State allocations may not include State or federal funds.

20 (b) Area authorities may not use funds received under G.S. 20- 179.2(f) or G.S.  
21 90-96.01(a)(4) to match funds under this section.”

22 Sec. 19. G.S. 122C-151 reads as rewritten:

23 **“§ 122C-151. Responsibilities of those receiving appropriations.**

24 All resources allocated to and received by any area authority and used for programs  
25 of mental health, ~~mental retardation,~~ developmental disabilities, substance abuse or other  
26 related fields are subject to the conditions specified in this Article and to the rules of the  
27 Commission and the Secretary.”

28 Sec. 20. G.S. 122C-201 reads as rewritten:

29 **“§ 122C-201. Declaration of policy.**

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

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

40 Sec. 21. G.S. 122C-202 reads as rewritten:

41 **“§ 122C-202. Applicability of Article.**

42 This Article applies to all facilities unless expressly provided otherwise. Specific  
43 provisions that are delineated by the disability of the client, whether mentally ill,  
44 mentally retarded, developmentally disabled, or substance abuser, also apply to all

1 facilities for that client's disability. Provisions that refer to a specific facility or type of  
2 facility apply only to the designated facility or facilities."

3 Sec. 22. G.S. 122C-203 reads as rewritten:

4 **"§ 122C-203. Admission or commitment and incompetency proceedings to have no**  
5 **effect on one another.**

6 The admission or commitment to a facility of an alleged mentally ill individual, an  
7 alleged substance abuser, or an alleged mentally retarded or developmentally disabled  
8 individual under the provisions of this Article shall in no way affect incompetency  
9 proceedings as set forth in Chapters 33 or 35 of the General Statutes and incompetency  
10 proceedings under those Chapters shall have no effect upon admission or commitment  
11 proceedings under this Article."

12 Sec. 23. Part 5 of Article 5 of Chapter 122C of the General Statutes reads as  
13 rewritten:

14 **"PART 5. VOLUNTARY ADMISSIONS AND DISCHARGES,**  
15 **MINORS AND ADULTS, FACILITIES FOR**  
16 **INDIVIDUALS WITH ~~MENTAL RETARDATION~~ DEVELOPMENTAL**  
17 **DISABILITIES.**

18 **"§ 122C-241. Admissions.**

19 (a) Except as provided in subsection (c) of this section an individual with ~~mental~~  
20 ~~retardation~~ developmental disabilities may be admitted to a facility for the ~~mentally~~  
21 ~~retarded~~ developmentally disabled in order that he receive care, habilitation, training, or  
22 treatment. Application for admission is made as follows:

23 (i1) A minor with ~~mental retardation~~ developmental disabilities may be  
24 admitted upon application by both the father and the mother if they are  
25 living together and, if not, by the parent or parents having custody or  
26 by the legally responsible person.

27 (ii2) An adult with ~~mental retardation~~ developmental disabilities who has  
28 been adjudicated incompetent under Chapters 33 or 35 of the General  
29 Statutes may be admitted upon application by his guardian.

30 (iii3) An adult with ~~mental retardation~~ developmental disabilities who has not  
31 been adjudicated incompetent under Chapters 33 or 35 of the General  
32 Statutes may be admitted upon his own application.

33 (b) Prior to admission to a 24-hour facility, the individual shall be examined and  
34 evaluated by a physician or psychologist to determine whether the individual is ~~mentally~~  
35 ~~retarded~~ developmentally disabled. In addition, the individual shall be examined and  
36 evaluated by a qualified ~~mental retardation~~ developmental disabilities professional no  
37 sooner than 31 days prior to admission or within 72 hours after admission to determine  
38 whether the individual is in need of care, habilitation, rehabilitation, training or  
39 treatment by the facility. If the evaluating professional determines that the individual  
40 will not benefit from an admission, the individual shall not be admitted as a client.

41 (c) An admission to an area or State 24-hour facility of an individual from a  
42 single portal area shall follow the procedures as prescribed in the area plan. When an  
43 individual from a single portal area presents himself or is presented for admission to a  
44 State facility for the mentally retarded directly and is in need of an emergency

1 admission, he may be accepted for admission. The State facility shall notify the area  
2 authority within 24 hours of the admission and further planning of treatment for the  
3 individual is the joint responsibility of the area authority and the State facility as  
4 prescribed in the area plan.

5 **"§ 122C-242. Discharges.**

6 (a) Except as provided in subsections (b) through (d) of this section, discharges  
7 from facilities for individuals with ~~mental retardation~~ developmental disabilities are made  
8 upon request of the individual authorized in G.S. 122C-241(a) to make application for  
9 admission or by the director of the facility.

10 (b) Any adult who has not been declared incompetent and who is admitted to a  
11 24-hour facility shall be discharged upon his own request, unless the director of the  
12 facility has reason to believe that the adult is endangering himself by the discharge. In  
13 this case the individual may be held for a period not to exceed five days while the  
14 director petitions for the adjudication of incompetency of the individual and the  
15 appointment of an interim guardian under Chapters 33 or 35 of the General Statutes.

16 (c) Any individual admitted to a 24-hour facility may be discharged when in the  
17 judgment of the director of the facility the individual is no longer in need of care,  
18 treatment, habilitation or rehabilitation by the facility or the individual will no longer  
19 benefit from the service available. In the case of an area or State facility rules adopted  
20 by the Commission or by the Secretary in accordance with G.S. 122C-63 shall be  
21 followed.

22 (d) When the individual to be discharged from an area or State 24- hour facility is  
23 a resident of a single portal area, the discharge shall follow the procedures described in  
24 the area plan."

25 Sec. 24. Part 4 of Article 3 of Chapter 143B of the General Statutes is  
26 rewritten to read:

27 **"PART 4. COMMISSION FOR MENTAL HEALTH, ~~MENTAL RETARDATION~~**  
28 **DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES.**

29 **"§ 143B-147. Commission for Mental Health, ~~Mental Retardation~~ Developmental**  
30 **Disabilities, and Substance Abuse Services – creation, powers and duties.**

31 (a) There is hereby created the Commission for Mental Health, ~~Mental Retardation~~  
32 Developmental Disabilities, and Substance Abuse Services of the Department of Human  
33 Resources with the power and duty to adopt, amend and repeal rules to be followed in  
34 the conduct of State and local mental health, ~~mental retardation~~, developmental  
35 disabilities, alcohol and drug abuse programs including education, prevention,  
36 intervention, treatment, rehabilitation and other related services. Such rules shall be  
37 designed to promote the amelioration or elimination of the mental health, ~~mental~~  
38 ~~retardation~~, developmental disabilities, or alcohol and drug abuse problems of the  
39 citizens of this State. The Commission for Mental Health, ~~Mental Retardation~~  
40 Developmental Disabilities, and Substance Abuse Services shall have the authority:

41 (1) To adopt rules regarding the

42 a. Admission, including the designation of regions, treatment, and  
43 professional care of individuals admitted to a facility operated

- 1 under the authority of G.S. 122C- 181(a), that is now or may be  
2 established;
- 3 b. Operation of education, prevention, intervention, treatment,  
4 rehabilitation and other related services as provided by area  
5 mental health, ~~mental retardation~~ developmental disabilities, and  
6 substance abuse authorities under Part 4 of Article 4 of Chapter  
7 122C of the General Statutes;
- 8 c. Hearings and appeals of area mental health, ~~mental retardation~~  
9 developmental disabilities, and substance abuse authorities as  
10 provided for in Part 4 of Article 4 of Chapter 122C of the  
11 General Statutes;
- 12 d. Requirements of the federal government for grants-in-aid for  
13 mental health, ~~mental retardation~~, developmental disabilities,  
14 alcohol or drug abuse programs which may be made available  
15 to local programs or the State. This section is to be liberally  
16 construed in order that the State and its citizens may benefit  
17 from such grants-in-aid;
- 18 (2) To adopt rules for the licensing of facilities for the mentally ill,  
19 ~~mentally retarded~~ developmentally disabled, and substance abusers,  
20 under Article 2 of Chapter 122C of the General Statutes.
- 21 (3) To advise the Secretary of the Department of Human Resources  
22 regarding the need for, provision and coordination of education,  
23 prevention, intervention, treatment, rehabilitation and other related  
24 services in the areas of:
- 25 a. Mental illness and mental health,  
26 b. ~~Mental retardation~~, developmental disabilities,  
27 c. Alcohol abuse, and  
28 d. Drug abuse;
- 29 (4) To review and advise the Secretary of the Department of Human  
30 Resources regarding all State plans required by federal or State law  
31 and to recommend to the Secretary any changes it thinks necessary in  
32 those plans; provided, however, for the purposes of meeting State plan  
33 requirements under federal or State law, the Department of Human  
34 Resources is designated as the single State agency responsible for  
35 administration of plans involving mental health, ~~mental retardation~~,  
36 developmental disabilities, alcohol abuse, and drug abuse services;
- 37 (5) To adopt rules relating to the registration and control of the  
38 manufacture, distribution, and dispensing of controlled substances as  
39 provided by G.S. 90-100;
- 40 (6) To adopt rules to establish the professional requirements for staff of  
41 licensed facilities for the mentally ill, ~~mentally retarded~~  
42 developmentally disabled, and substance abusers. Such rules may  
43 require that one or more, but not all staff of a facility be either licensed  
44 or certified. If a facility has only one professional staff, such rules may



1 require that that individual be licensed or certified. Such rules may  
2 include the recognition of professional certification boards for those  
3 professions not licensed or certified under other provisions of the  
4 General Statutes provided that the professional certification board  
5 evaluates applicants on a basis which protects the public health, safety  
6 or welfare;

7 (7) Except where rule making authority is assigned under that Article to  
8 the Secretary of Human Resources, to adopt rules to implement Article  
9 3 of Chapter 122C of the General Statutes;

10 (8) To adopt rules specifying procedures for waiver of rules adopted by  
11 the Commission.

12 (b) All rules hereby adopted shall be consistent with the laws of this State and not  
13 inconsistent with the management responsibilities of the Secretary of Human Resources  
14 provided by this Chapter and the Executive Organization Act of 1973.

15 (c) All rules and regulations pertaining to the delivery of services and licensing  
16 of facilities heretofore adopted by the Commission for Mental Health and Mental  
17 Retardation ~~Services and Services,~~ controlled substances rules and regulations adopted  
18 by the North Carolina Drug Commission—Commission, and all rules and regulations  
19 adopted by the Commission for Mental Health, Mental Retardation and Substance  
20 Abuse Services shall remain in full force and effect unless and until repealed or  
21 superseded by action of the Commission for Mental Health, ~~Mental Retardation~~  
22 Developmental Disabilities, and Substance Abuse Services.

23 (d) All rules adopted by the Commission for Mental Health, ~~Mental Retardation~~  
24 Developmental Disabilities, and Substance Abuse Services shall be enforced by the  
25 Department of Human Resources.

26 **"§ 143B-148. Commission for Mental Health, ~~Mental Retardation—Developmental~~**  
27 **Disabilities, and Substance Abuse Services – members; selection;**  
28 **quorum; compensation.**

29 (a) The Commission for Mental Health, ~~Mental Retardation—Developmental~~  
30 Disabilities, and Substance Abuse Services of the Department of Human Resources  
31 shall consist of 25 members:

32 (1) Four of whom shall be appointed by the General Assembly, two upon  
33 the recommendation of the Speaker of the House of Representatives,  
34 and two upon the recommendation of the President of the Senate in  
35 accordance with G.S. 120-121. These members shall have concern for  
36 the problems of mental illness, ~~mental retardation,~~ developmental  
37 disabilities, alcohol and drug abuse. The initial members appointed to  
38 the Commission by the General Assembly shall serve for terms  
39 expiring June 30, 1983. Thereafter, their successors shall serve for  
40 two-year terms beginning July 1 of odd-numbered years. Vacancies in  
41 appointments made by the General Assembly shall be filled in  
42 accordance with G.S. 120-122;

- 1           (2) Twenty-one of whom shall be appointed by the Governor, one from  
2 each congressional district in the State in accordance with G.S. 147-  
3 12(3)b, and 10 at-large members.
- 4           a. Of these 21 members, three shall have a special interest in  
5 mental health, three shall have a special interest in mental  
6 retardation, three shall have a special interest in developmental  
7 disabilities other than mental retardation, three shall have a  
8 special interest in alcohol abuse and alcoholism and three shall  
9 have a special interest in drug abuse. Each group of three shall  
10 be made up of one member who is a consumer representative;  
11 one other who is a representative of a local or State citizen  
12 organization or association; and one other who is a professional  
13 in the field.
- 14           b. The remaining ~~nine~~six members shall be appointed from the  
15 general public, other citizen groups, area mental health, ~~mental~~  
16 ~~retardation~~, developmental disabilities, and substance abuse  
17 authorities, or from other related agencies.
- 18           c. Of these 21 appointments, at least one shall be a licensed  
19 physician and at least one other shall be a licensed attorney.
- 20           d. The Governor shall appoint members to the Commission in  
21 accordance with the foregoing provisions. At the initial  
22 formation of the Commission for Mental Health, ~~Mental~~  
23 ~~Retardation~~Developmental Disabilities, and Substance Abuse  
24 Services, the Governor shall designate seven of his appointees  
25 to serve for two years, seven to serve for three years and seven  
26 to serve for four years, all to commence on July 1, 1981.  
27 Thereafter the terms of all Commission members appointed by  
28 the Governor shall be four years. All Commission members  
29 shall serve their designated terms and until their successors are  
30 duly appointed and qualified. All Commission members may  
31 succeed themselves.
- 32           (3) All appointments shall be made pursuant to current federal rules and  
33 regulations, when not inconsistent with State law, which prescribe the  
34 selection process and demographic characteristics as a necessary  
35 condition to the receipt of federal aid.
- 36           (b) Except as otherwise provided in this section, the provisions of G.S. 143B-13  
37 through 143B-20 relating to appointment, qualifications, terms and removal of members  
38 shall apply to all members of the Commission for Mental Health, ~~Mental Retardation~~  
39 Developmental Disabilities, and Substance Abuse Services.
- 40           (c) Commission members shall receive per diem, travel and subsistence  
41 allowances in accordance with G.S. 138-5 and G.S. 138-6, as appropriate.
- 42           (d) A majority of the Commission shall constitute a quorum for the transaction  
43 of business.

1 (e) All clerical and other services required by the Commission shall be supplied  
2 by the Secretary of Human Resources.

3 **"§ 143B-149. Commission for Mental Health, ~~Mental Retardation~~ Developmental  
4 Disabilities, and Substance Abuse Services – officers.**

5 The Commission for Mental Health, ~~Mental Retardation~~ Developmental Disabilities,  
6 and Substance Abuse Services shall have a chairman and a vice-chairman. The  
7 chairman shall be designated by the Governor from among the members and shall serve  
8 as chairman at his pleasure. The vice-chairman shall be elected by and from the  
9 members of the Commission and shall serve for a term of two years or until the  
10 expiration of his regularly appointed term.

11 **"§ 143B-150. Commission for Mental Health, ~~Mental Retardation~~ Developmental  
12 Disabilities, and Substance Abuse Services – regular and special  
13 meetings.**

14 The Commission for Mental Health, ~~Mental Retardation~~ Developmental Disabilities,  
15 and Substance Abuse Services shall meet at least once in each quarter and may hold  
16 special meetings at any time and place within the State at the call of the chairman or  
17 upon the written request of at least eight members."

18 Sec. 25. G.S.120-123(22) reads as rewritten:

19 "(22) The Commission for Mental Health, ~~Mental Retardation~~ Developmental  
20 Disabilities, and Substance Abuse Services, as established by G.S. ~~143B-148-143B-147.~~"

21 Sec. 26. This act shall become effective January 1, 1990, except that G.S.  
22 122C-118, as amended by Section 14 of this act shall become effective July 1, 1989.