

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 43*

Short Title: Automatic Commitment/Insanity.

(Public)

Sponsors: Senators Odom; Allran, Basnight, Blackmon, Block, Bryan, Carpenter, Carter, Cochrane, Daniel, Daughtry, Forrester, Hartsell, Johnson, Kincaid, Lee, Martin of Pitt, Marvin, Murphy, Parnell, Perdue, Plexico, Plyler, Pollard, Raynor, Royall, Sands, Seymour, Shaw, Simpson, Smith, Speed, Staton, Tally, Walker, and Ward.

Referred to: Judiciary II.

February 7, 1991

A BILL TO BE ENTITLED

1 AN ACT TO PROVIDE FOR AUTOMATIC COMMITMENT OF PERSONS FOUND
2 NOT GUILTY BY REASON OF INSANITY OF VIOLENT CRIMES AND
3 SHIFTING BURDEN OF PROOF.
4

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 15A-1321 reads as rewritten:

7 "**§ 15A-1321. Civil commitment of defendants found not guilty by reason of**
8 **insanity.**

9 ~~When~~ Except as provided in G.S. 15A-1321.1, when a defendant charged with a
10 crime is found not guilty by reason of insanity by jury verdict or upon motion pursuant
11 to G.S. 15A-959(c), the presiding judge upon such additional hearing, if any, as he
12 determines to be necessary, shall determine whether there are reasonable grounds to
13 believe the defendant meets the criteria for involuntary commitment under Part 7 of
14 Article 5 of Chapter 122C of the General Statutes. If the presiding judge finds
15 reasonable grounds to believe that the defendant meets the criteria, he shall make
16 findings of fact and issue a custody order in the same manner, upon the same grounds,
17 and with the same effect, as an order issued by a clerk or magistrate pursuant to G.S.
18 122C-261. Proceedings thereafter are in accordance with Part 7 of Article 5 of Chapter
19 122C of the General Statutes. ~~However, if the defendant was charged with a violent crime,~~
20 ~~including a crime involving assault with a deadly weapon, the judge's custody order shall~~
21 ~~require a law enforcement officer to take the defendant directly to a 24-hour facility as~~

1 described in G.S. 122C-252; and the order must indicate that the defendant was charged with a
2 violent crime and that he was found not guilty by reason of insanity."

3 Sec. 2. Article 80 of Chapter 15A is amended by adding a new section to
4 read:

5 **"§ 15A-1321.1. Automatic commitment of defendants charged with a violent crime**
6 **and found not guilty by reason of insanity.**

7 (a) When a defendant charged with a violent crime, including a crime
8 involving assault with a deadly weapon, is found not guilty by reason of insanity by jury
9 verdict or upon motion pursuant to G.S. 15A-959(c), in lieu of an initial hearing for
10 involuntary commitment pursuant to Part 7, Article 5, Chapter 122C, the presiding
11 judge shall enter an order finding that the defendant has been found not guilty by reason
12 of insanity of a violent crime and granting custody of the defendant to a law-
13 enforcement officer, who shall take the defendant directly to a State 24-hour facility
14 designated pursuant to G.S. 122C-252 to be committed to that facility for a period of not
15 less than 50 days but not to exceed 90 days.

16 (b) A defendant who is committed pursuant to subsection (a) of this section shall
17 remain committed until such time as he is eligible for release pursuant to G.S. 122C-276
18 or G.S. 122C-277(b).

19 (c) Notwithstanding any other provision of law, any hearing or rehearing
20 concerning discharge or conditional release of a defendant charged with a violent crime
21 and committed pursuant either to subsection (a) of this section or G.S. 15A-1321 shall
22 take place in the trial division in which the original trial was held and shall be open to
23 the public. For purposes of this section 'trial division' means either the Superior Court
24 Division or the district court division of the General Court of Justice.

25 (d) Upon receipt of notice pursuant to G.S. 122C-276(a) or G.S. 122C-276(b),
26 the district attorney of the county in which the defendant was found not guilty by reason
27 of insanity of a violent crime shall notify any persons he deems appropriate, including
28 anyone who has filed a written request for notification with his office, of any hearing or
29 rehearing concerning discharge or conditional release of that defendant. Notice shall be
30 sent by first class mail to the individual's last known address."

31 Sec. 3. G.S. 122C-276 reads as rewritten:

32 **"§ 122C-276. Inpatient commitment; rehearings.**

33 (a) Fifteen days before the end of the initial inpatient commitment period if the
34 attending physician determines that commitment of a respondent beyond the initial
35 period will be necessary, he shall so notify the clerk of superior court of the county in
36 which the facility is located. The clerk, at least 10 days before the end of the initial
37 period, on order of a district court judge of the district court district as defined in G.S.
38 7A-133 in which the facility is located, shall calendar the rehearing. If the respondent
39 was initially committed as the result of conduct resulting in his being charged with a
40 violent crime, including a crime involving an assault with a deadly weapon, and
41 respondent was found not guilty by reason of insanity or incapable of proceeding, the
42 clerk shall also notify the chief district court judge, the clerk of superior court, and the
43 district attorney in the county in which the respondent was found not guilty by reason of
44 insanity or incapable of proceeding of the time and place of the hearing.

1 (b) Fifteen days before the end of the initial treatment period of a respondent who
2 was initially committed as a result of conduct resulting in his being charged with a
3 violent crime, including a crime involving an assault with a deadly weapon, having been
4 found not guilty by reason of insanity or incapable of proceeding, if the attending
5 physician determines that commitment of the respondent beyond the initial period will
6 not be necessary, he shall so notify the clerk of superior court who shall schedule a
7 rehearing as provided in subsection (a) of this section. Provided, that in no event shall
8 rehearing be allowed for a respondent committed after being found not guilty by reason
9 of insanity of commission of a violent crime before 50 days have passed since the date
10 of his initial commitment to the State facility.

11 (c) Subject to the provisions of G.S. 122C-269(c), rehearings shall be held at the
12 facility in which the respondent is receiving treatment. The judge is a judge of the
13 district court of the district court district as defined in G.S. 7A-133 in which the facility
14 is located or a district court judge temporarily assigned to that district.

15 (d) Notice and proceedings of rehearings are governed by the same procedures as
16 initial hearings and the respondent has the same rights he had at the initial hearing
17 including the right to appeal. Provided, that in a rehearing for a respondent committed
18 pursuant to G.S. 15A-1321.1, or G.S. 15A-1321 if charged with a violent crime, the
19 respondent shall bear the burden to prove by a preponderance of the evidence that he is
20 no longer mentally ill and that he is no longer either dangerous to himself or others and
21 that, therefore, he is entitled to release. For purposes of this section, dangerous to others
22 means that within the relevant past, the individual has inflicted or attempted to inflict or
23 threatened to inflict serious bodily harm on another, or has acted in such a way as to
24 create a substantial risk of serious bodily harm to another, or has engaged in extreme
25 destruction of property; and that there is a reasonable probability that this conduct will
26 be repeated. Previous episodes of dangerousness to others shall be considered when
27 determining reasonable probability of future dangerous conduct. Clear, cogent, and
28 convincing evidence that an individual has committed a homicide in the relevant past is
29 **prima facie** evidence of dangerousness to others.

30 (e) At rehearings the court may make the same dispositions authorized in G.S.
31 122C-271(b) except a second commitment order may be for an additional period not in
32 excess of 180 days.

33 (f) Fifteen days before the end of the second commitment period and annually
34 thereafter, the attending physician shall review and evaluate the condition of each
35 respondent; and if he determines that a respondent is in continued need of inpatient
36 commitment or, in the alternative, in need of outpatient commitment, or a combination
37 of both, he shall so notify the respondent, his counsel, and the clerk of superior court of
38 the county, in which the facility is located. Unless the respondent through his counsel
39 files with the clerk a written waiver of his right to a rehearing, the clerk, on order of a
40 district court judge of the district in which the facility is located, shall calendar a
41 rehearing for not later than the end of the current commitment period. The procedures
42 and standards for the rehearing are the same as for the first rehearing. No third or
43 subsequent inpatient recommitment order shall be for a period longer than one year.

1 (g) At any rehearings the court has the option to order outpatient commitment for
2 a period not in excess of 180 days in accordance with the criteria specified in G.S.
3 122C-263(d)(1) and following the procedures as specified in this Article."

4 Sec. 4. G.S. 122C-277 reads as rewritten:

5 **"§ 122C-277. Release and conditional release; judicial review.**

6 (a) Except as provided in subsection (b) of this section, the attending physician
7 shall discharge a committed respondent unconditionally at any time he determines that
8 the respondent is no longer in need of inpatient commitment. However, if the attending
9 physician determines that the respondent meets the criteria for outpatient commitment
10 as defined in G.S. 122C-263(d)(1), he may request the clerk to calendar a supplemental
11 hearing to determine whether an outpatient commitment order shall be issued. Except as
12 provided in subsection (b) of this section, the attending physician may also release a
13 respondent conditionally for periods not in excess of 30 days on specified medically
14 appropriate conditions. Violation of the conditions is grounds for return of the
15 respondent to the releasing facility. A law-enforcement officer, on request of the
16 attending physician, shall take a conditional releasee into custody and return him to the
17 facility in accordance with G.S. 122C-205. Notice of discharge and of conditional
18 release shall be furnished to the clerk of superior court of the county of commitment and
19 of the county in which the facility is located.

20 (b) If the respondent was initially committed as the result of conduct resulting in
21 his being charged with a violent crime, including a crime involving an assault with a
22 deadly weapon, and respondent was found not guilty by reason of insanity or incapable
23 of proceeding, 15 days before the respondent's discharge or conditional release the
24 attending physician shall notify the clerk of superior court of the county in which the
25 facility is located of his determination regarding the proposed discharge or conditional
26 release. Provided, that in no event shall discharge or conditional release be allowed for
27 a respondent committed after being found not guilty by reason of insanity of committing
28 a violent crime before 50 days have passed since the date of his initial commitment to
29 the State facility. The clerk shall then schedule a rehearing to determine the
30 appropriateness of respondent's release under the standards of commitment set forth in
31 G.S. 122C-271(b). The clerk shall give notice as provided in G.S. 122C-264(d). The
32 district attorney of the district where respondent was found not guilty by reason of
33 insanity or incapable of proceeding may represent the State's interest at the hearing. In
34 such hearings as are conducted pursuant to this section for persons found not guilty by
35 reason of insanity of committing a violent crime, the respondent shall bear the burden of
36 proving by a preponderance of the evidence that he is no longer mentally ill and that he
37 is no longer either dangerous to himself or others, and that, therefore, he is entitled to
38 release. For purposes of this section, dangerous to others means that within the relevant
39 past, the individual has inflicted or attempted to inflict or threatened to inflict serious
40 bodily harm on another, or has acted in such a way as to create a substantial risk of
41 serious bodily harm to another, or has engaged in extreme destruction of property; and
42 that there is a reasonable probability that this conduct will be repeated. Previous
43 episodes of dangerousness to others shall be considered when determining reasonable
44 probability of future dangerous conduct. Clear, cogent, and convincing evidence that an

1 individual has committed a homicide in the relevant past is **prima facie** evidence of
2 dangerousness to others.

3 (c) If a committed respondent under either subsection (a) or (b) of this section is
4 from a single portal area, the attending physician shall plan jointly with the area
5 authority as prescribed in the area plan before discharging or releasing the respondent."

6 Sec. 5. This act becomes effective October 1, 1991.