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Short Title: Automatic Commitment/Insanity.

(Public)

Sponsors:

Referred to:

February 7, 1991

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR AUTOMATIC CIVIL COMMITMENT OF A DEFENDANT CHARGED WITH A CRIME AND FOUND NOT GUILTY BY REASON OF INSANITY, TO SHIFT THE BURDEN OF PROOF TO THE DEFENDANT AT SUBSEQUENT HEARINGS ON RELEASE, AND TO MAKE OTHER CHANGES IN RELATED PROCEDURES.

The General Assembly of North Carolina enacts:

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

"§ 15A-1321. ~~Civil~~ **Automatic civil commitment of defendants found not guilty by reason of insanity.**

When a defendant charged with a crime is found not guilty by reason of insanity by jury-verdict or upon motion pursuant to G.S. 15A-959(c), the presiding judge shall enter an order finding that the defendant has been found not guilty by reason of insanity of a crime and committing the defendant to a State 24-hour facility designated pursuant to G.S. 122C-252. The court order shall also grant custody of the defendant to a law enforcement officer who shall take the defendant directly to that facility. ~~upon such additional hearing, if any, as he determines to be necessary, shall determine whether there are reasonable grounds to believe the defendant meets the criteria for involuntary commitment under Part 7 of Article 5 of Chapter 122C of the General Statutes. If the presiding judge finds reasonable grounds to believe that the defendant meets the criteria, he shall make findings of fact and issue a custody order in the same manner, upon the same grounds, and with the same effect, as an order issued by a clerk or magistrate pursuant to G.S. 122C-261. Proceedings~~

1 thereafter are in accordance with Part 7 of Article 5 of Chapter 122C of the General
2 Statutes. However, if the defendant was charged with a violent crime, including a crime
3 involving assault with a deadly weapon, the judge's custody order shall require a law-
4 enforcement officer to take the defendant directly to a 24-hour facility as described in G.S.
5 122C-252; and the order must indicate that the defendant was charged with a violent crime and
6 that he was found not guilty by reason of insanity."

7 Sec. 2. Part 7 of Article 5 of Chapter 122C of the General Statutes is amended
8 by adding a new section to read:

9 **"§ 122C-268.1. Inpatient commitment; hearing following automatic commitment.**

10 (a) A respondent who is committed pursuant to G.S. 15A-1321 shall be provided
11 a hearing, unless waived, before the expiration of 50 days from the date of his
12 commitment.

13 (b) The district attorney in the county in which the respondent was found not
14 guilty by reason of insanity may represent the State's interest at the hearing. If the
15 district attorney declines to represent the State's interest, then the representation shall be
16 determined as follows. An attorney, who is a member of the staff of the Attorney
17 General assigned to one of the State's facilities for the mentally ill or the psychiatric
18 service of the University of North Carolina Hospitals at Chapel Hill, may represent the
19 State's interest at commitment hearings, rehearings, and supplemental hearings.
20 Alternatively, the Attorney General may, in his discretion, designate an attorney who is
21 a member of his staff to represent the State's interest at any commitment hearing,
22 rehearing, or supplemental hearing.

23 (c) The clerk shall give notice of the time and place of the hearing as provided in
24 G.S. 122C-264(d1).

25 (d) The respondent shall be represented by counsel of his choice, or if he is
26 indigent within the meaning of G.S. 7A-450 or refuses to retain counsel if financially
27 able to do so, he shall be represented by counsel appointed by the court.

28 (e) With the consent of the court, counsel may in writing waive the presence of
29 the respondent.

30 (f) Certified copies of reports and findings of physicians and psychologists and
31 previous and current medical records are admissible in evidence, but the respondent's
32 right to confront and cross-examine witnesses may not be denied.

33 (g) The hearing shall take place in the trial division in which the original trial was
34 held. The hearing shall be open to the public. For purposes of this subsection, 'trial
35 division' means either the superior court division or the district court division of the
36 General Court of Justice.

37 (h) A copy of all documents admitted into evidence and a transcript of the
38 proceedings shall be furnished to the respondent on request by the clerk upon the
39 direction of the presiding judge. If the respondent is indigent, the copies shall be
40 provided at State expense.

41 (i) The respondent shall bear the burden to prove by a preponderance of the
42 evidence that he is no longer dangerous to others. If the court is so satisfied, then the
43 respondent shall bear the burden to prove by a preponderance of the evidence (i) that he
44 does not have a mental illness, or (ii) that confinement is not necessary to ensure his

1 own survival or safety and that confinement is not necessary to alleviate or cure his
2 illness. If the court is so satisfied, then the court shall order the respondent discharged
3 and released. If the court finds that the respondent has not met his burdens of proof,
4 then the court shall order that inpatient commitment continue at a 24-hour facility
5 designated pursuant to G.S. 122C-252 for a period not to exceed 90 days.

6 (j) Nothing in this section shall limit the respondent's right to **habeas corpus**
7 relief."

8 Sec. 3. Part 7 of Article 5 of Chapter 122C of the General Statutes is amended
9 by adding a new section to read:

10 **"§ 122C-276.1. Inpatient commitment; rehearings for respondents who are insanity**
11 **acquittees.**

12 (a) At least 15 days before the end of any inpatient commitment period ordered
13 pursuant to G.S. 122C-268.1, the clerk shall calendar the hearing and notify the parties
14 as specified in G.S. 122C-264(d1), unless the hearing is waived by the respondent.

15 (b) The proceedings of the rehearing shall be governed by the same procedures
16 provided by G.S. 122C-268.1.

17 (c) The respondent shall bear the burden to prove by a preponderance of the
18 evidence that he is no longer dangerous to others. If the court is so satisfied, then the
19 respondent shall bear the burden to prove by a preponderance of the evidence (i) that he
20 does not have a mental illness, or (ii) that confinement is not necessary to ensure his
21 own survival or safety and that confinement is not necessary to alleviate or cure his
22 illness. If the court is so satisfied, then the court shall order the respondent discharged
23 and released. If the court finds that the respondent has not met his burdens of proof, then
24 the court shall order inpatient commitment be continued for a period not to exceed 180
25 days.

26 (d) At least 15 days before the end of any commitment period ordered pursuant
27 to subsection (c) of this section and annually thereafter, the clerk shall calendar the
28 hearing and notify the parties as specified in G.S. 122C-264(d1). The procedures and
29 standards for the rehearing are the same as under this section. No third or subsequent
30 inpatient recommitment order shall be for a period longer than one year."

31 Sec. 4. G.S. 122C-264 reads as rewritten:

32 **"§ 122C-264. Duties of clerk of superior court and the district attorney.**

33 (a) Upon receipt of a physician's or eligible psychologist's finding that the
34 respondent meets the criteria of G.S. 122C-263(d)(1) and that outpatient commitment is
35 recommended, the clerk of superior court of the county where the petition was initiated,
36 upon direction of a district court judge, shall calendar the matter for hearing and shall
37 notify the respondent, the proposed outpatient treatment physician or center, and the
38 petitioner of the time and place of the hearing. The petitioner may file a written waiver
39 of his right to notice under this subsection with the clerk of court.

40 (b) Upon receipt of a physician's or eligible psychologist's finding that a
41 respondent meets the criteria of G.S. 122C-263(d)(2) and that inpatient commitment is
42 recommended, the clerk of superior court of the county where the 24-hour facility is
43 located shall, after determination required by G.S. 122C-261(c) and upon direction of a
44 district court judge, assign counsel if necessary, calendar the matter for hearing, and

1 notify the respondent, his counsel, and the petitioner of the time and place of the
2 hearing. The petitioner may file a written waiver of his right to notice under this
3 subsection with the clerk of court.

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

12 (c) Notice to the respondent, required by subsections (a) and (b) of this section,
13 shall be given as provided in G.S. 1A-1, Rule 4(j) at least 72 hours before the hearing.
14 Notice to other individuals shall be sent at least 72 hours before the hearing by first-
15 class mail postage prepaid to the individual's last known address. G.S. 1A-1, Rule 6
16 shall not apply.

17 (d) In cases described in G.S. 122C-266(b) in addition to notice required in
18 subsections (a) and (b) of this section, the clerk of superior court shall notify the chief
19 district judge and the district attorney in the county in which the defendant was found
20 ~~not guilty by reason of insanity or incapable of proceeding~~. The notice shall be given in the
21 same way as the notice required by subsection (c) of this section. The judge or the
22 district attorney may file a written waiver of his right to notice under this subsection
23 with the clerk of court.

24 (d1) For hearings and rehearings pursuant to G.S. 122C-268.1 and G.S. 122C-
25 276.1, the clerk of superior court shall calendar the hearing or rehearing and shall notify
26 the respondent, his counsel, counsel for the State, and the district attorney involved in
27 the original trial. The notice shall be given in the same manner as the notice required by
28 subsection (c) of this section. Upon receipt of the notice, the district attorney shall notify
29 any persons he deems appropriate, including anyone who has filed with his office a
30 written request for notification of any hearing or rehearing concerning discharge or
31 conditional release of a respondent. Notice sent by the district attorney shall be by first-
32 class mail to the person's last known address.

33 (e) The clerk of superior court of the county where outpatient commitment is to
34 be supervised shall keep a separate list regarding outpatient commitment and shall
35 prepare quarterly reports listing all active cases, the assigned supervisor, and the
36 disposition of all hearings, supplemental hearings, and rehearings.

37 (f) The clerk of superior court of the county where inpatient commitment
38 hearings and rehearings are held shall provide all notices, send all records and maintain
39 a record of all proceedings as required by this Part; provided that if the respondent has
40 been committed to a 24-hour facility in a county other than his county of residence and
41 the district court hearing is held in the county of the facility, the clerk of superior court
42 in the county of the facility shall forward the record of the proceedings to the clerk of
43 superior court in the county of respondent's residence, where they shall be maintained
44 by receiving clerk."

1 Sec. 5. G.S. 122C-276 reads as rewritten:

2 "**§ 122C-276. Inpatient commitment; rehearings for respondents other than**
3 **insanity acquittees.**

4 (a) Fifteen days before the end of the initial inpatient commitment period if the
5 attending physician determines that commitment of a respondent beyond the initial
6 period will be necessary, he shall so notify the clerk of superior court of the county in
7 which the facility is located. The clerk, at least 10 days before the end of the initial
8 period, on order of a district court judge of the district court district as defined in G.S.
9 7A-133 in which the facility is located, shall calendar the rehearing. If the respondent
10 was initially committed as the result of conduct resulting in his being charged with a
11 violent crime, including a crime involving an assault with a deadly weapon, and
12 respondent was found ~~not guilty by reason of insanity or incapable of proceeding~~, the clerk
13 shall also notify the chief district court judge, the clerk of superior court, and the district
14 attorney in the county in which the respondent was found ~~not guilty by reason of insanity~~
15 ~~or incapable of proceeding~~ of the time and place of the hearing.

16 (b) Fifteen days before the end of the initial treatment period of a respondent who
17 was initially committed as a result of conduct resulting in his being charged with a
18 violent crime, including a crime involving an assault with a deadly weapon, having been
19 found ~~not guilty by reason of insanity or incapable of proceeding~~, if the attending
20 physician determines that commitment of the respondent beyond the initial period will
21 not be necessary, he shall so notify the clerk of superior court who shall schedule a
22 rehearing as provided in subsection (a) of this section.

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

27 (d) Notice and proceedings of rehearings are governed by the same procedures as
28 initial hearings and the respondent has the same rights he had at the initial hearing
29 including the right to appeal.

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. 6. G.S. 122C-277 reads as rewritten:

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

6 (a) Except as provided in ~~subsection~~subsections (b) and (b1) of this section, the
7 attending physician shall discharge a committed respondent unconditionally at any time
8 he determines that the respondent is no longer in need of inpatient commitment.
9 However, if the attending physician determines that the respondent meets the criteria for
10 outpatient commitment as defined in G.S. 122C-263(d)(1), he may request the clerk to
11 calendar a supplemental hearing to determine whether an outpatient commitment order
12 shall be issued. Except as provided in ~~subsection~~subsections (b) and (b1) of this section,
13 the attending physician may also release a respondent conditionally for periods not in
14 excess of 30 days on specified medically appropriate conditions. Violation of the
15 conditions is grounds for return of the respondent to the releasing facility. A law-
16 enforcement officer, on request of the attending physician, shall take a conditional
17 releasee into custody and return him to the facility in accordance with G.S. 122C-205.
18 Notice of discharge and of conditional release shall be furnished to the clerk of superior
19 court of the county of commitment and 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 of~~
23 ~~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. The clerk shall then schedule a rehearing to determine the appropriateness of
27 respondent's release under the standards of commitment set forth in G.S. 122C-271(b).
28 The clerk shall give notice as provided in G.S. 122C-264(d). The district attorney of the
29 district where respondent was found ~~not guilty by reason of insanity or incapable of~~
30 ~~proceeding~~ may represent the State's interest at the hearing.

31 (b1) If the respondent was initially committed pursuant to G.S. 15A-1321, 15 days
32 before the respondent's discharge or conditional release the attending physician shall
33 notify the clerk of superior court. The clerk shall calendar a hearing and shall give
34 notice as provided by G.S. 122C-264(d1). The district attorney for the original trial may
35 represent the State's interest at the hearing. The hearing shall be conducted under the
36 standards and procedures set forth in G.S. 122C-268.1. Provided, that in no event shall
37 discharge or conditional release under this section be allowed for a respondent during
38 the period from automatic commitment to hearing under G.S. 122C-268.1.

39 (c) If a committed respondent under ~~either subsection (a) or (b)~~subsections (a), (b),
40 or (b1) of this section is from a single portal area, the attending physician shall plan
41 jointly with the area authority as prescribed in the area plan before discharging or
42 releasing the respondent."

43 Sec. 7. G.S. 122C-261(e) reads as rewritten:

1 "(e) Upon receipt of the custody order of the clerk or magistrate or a custody order
2 issued by the court pursuant to G.S. 15A-1003 ~~or G.S. 15A-1321~~, a law-enforcement
3 officer or other person designated in the order shall take the respondent into custody
4 within 24 hours after the order is signed, and proceed according to G.S. 122C-263."

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

6 "(b) The examination set forth in subsection (a) of this section is not required if:

7 (1) The affiant who obtained the custody order is a physician or eligible
8 psychologist who recommends inpatient commitment;

9 (2) The custody order states that the respondent was charged with a
10 violent crime, including a crime involving assault with a deadly
11 weapon, and he was found ~~not guilty by reason of insanity or incapable~~
12 of proceeding; or

13 (3) Repealed by Session Laws 1987, c. 596, s. 3.

14 In any of these cases, the law-enforcement officer shall take the respondent directly to a
15 24-hour facility described in G.S. 122C-252."

16 Sec. 9. G.S. 122C-266(b) reads as rewritten:

17 "(b) If the custody order states that the respondent was charged with a violent
18 crime, including a crime involving assault with a deadly weapon, and that he was found
19 ~~not guilty by reason of insanity or incapable of proceeding~~, the physician shall examine
20 him as set forth in subsection (a) of this section. However, the physician may not release
21 him from the facility until ordered to do so following the district court hearing."

22 Sec. 10. G.S. 122C-268(c) reads as rewritten:

23 "(c) If the respondent's custody order indicates that he was charged with a violent
24 crime, including a crime involving an assault with a deadly weapon, and that he was
25 found ~~not guilty by reason of insanity or incapable of proceeding~~, the clerk shall give
26 notice of the time and place of the hearing as provided in G.S. 122C-264(d). The district
27 attorney in the county in which the respondent was found ~~not guilty by reason of insanity~~
28 ~~or incapable of proceeding~~ may represent the State's interest at the hearing."

29 Sec. 11. G.S. 122C-269(c) reads as rewritten:

30 "(c) Upon motion of any interested person, the venue of an initial hearing described
31 in G.S. 122C-268(c) or G.S. 122C-268.1 or a rehearing required by G.S. 122C-276(b),
32 G.S. 122C-276.1, ~~or G.S. 122C-277(b)~~ subsections (b) or (b1) of G.S. 122C-277 shall be
33 moved to the county in which the respondent was found not guilty by reason of insanity
34 or incapable of proceeding when the convenience of witnesses and the ends of justice
35 would be promoted by the change."

36 Sec. 12. G.S. 122C-271(b) reads as rewritten:

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

40 (1) If the court finds by clear, cogent, and convincing evidence that the
41 respondent is mentally ill; that he is capable of surviving safely in the
42 community with available supervision from family, friends, or others;
43 that based on respondent's psychiatric history, the respondent is in
44 need of treatment in order to prevent further disability or deterioration

1 that would predictably result in dangerousness as defined by G.S.
2 122C-3(11); and that the respondent's current mental status or the
3 nature of his illness limits or negates his ability to make an informed
4 decision voluntarily to seek or comply with recommended treatment, it
5 may order outpatient commitment for a period not in excess of 90
6 days. If the commitment proceedings were initiated as the result of the
7 respondent's being charged with a violent crime, including a crime
8 involving an assault with a deadly weapon, and the respondent was
9 found ~~not guilty by reason of insanity or~~ incapable of proceeding, the
10 commitment order shall so show.

11 (2) If the court finds by clear, cogent, and convincing evidence that the
12 respondent is mentally ill and is dangerous to himself, as defined in
13 G.S. 122C-3(11)a., or others, as defined in G.S. 122C-3(11)b., or is
14 mentally retarded and, because of an accompanying behavior disorder,
15 is dangerous to others, as defined in G.S. 122C-3(11)b., it may order
16 inpatient commitment at a 24-hour facility described in G.S. 122C-252
17 for a period not in excess of 90 days. However, an individual who is
18 mentally retarded and, because of an accompanying behavior disorder,
19 is dangerous to others, as defined in G.S. 122C-3(11)b., may not be
20 committed to a State, area or private facility for the mentally retarded.
21 An individual who is mentally ill and dangerous to himself, as defined
22 in G.S. 122C-3(11)a., or others, as defined in G.S. 122C-3(11)b., may
23 also be committed to a combination of inpatient and outpatient
24 commitment at both a 24-hour facility and an outpatient treatment
25 physician or center for a period not in excess of 90 days. If the
26 commitment proceedings were initiated as the result of the
27 respondent's being charged with a violent crime, including a crime
28 involving an assault with a deadly weapon, and the respondent was
29 found ~~not guilty by reason of insanity or~~ incapable of proceeding, the
30 commitment order shall so show. If the court orders inpatient
31 commitment for a respondent who is under an outpatient commitment
32 order, the outpatient commitment is terminated; and the clerk of the
33 superior court of the county where the district court hearing is held
34 shall send a notice of the inpatient commitment to the clerk of superior
35 court where the outpatient commitment was being supervised.

36 (3) If the court does not find that the respondent meets either of the
37 commitment criteria set out in subdivisions (1) and (2) of this
38 subsection, the respondent shall be discharged, and the facility in
39 which he was last a client so notified.

40 (4) Before ordering any outpatient commitment, the court shall make
41 findings of fact as to the availability of outpatient treatment. The court
42 shall also show on the order the outpatient treatment physician or
43 center who is to be responsible for the management and supervision of
44 the respondent's outpatient commitment. When an outpatient

1 commitment order is issued for a respondent held in a 24-hour facility,
2 the court may order the respondent held at the facility for no more than
3 72 hours in order for the facility to notify the designated outpatient
4 treatment physician or center of the treatment needs of the respondent.
5 The clerk of court in the county where the facility is located shall send
6 a copy of the outpatient commitment order to the designated outpatient
7 treatment physician or center. If the outpatient commitment will be
8 supervised in a county other than the county where the commitment
9 originated, the court shall order venue for further court proceedings to
10 be transferred to the county where the outpatient commitment will be
11 supervised. Upon an order changing venue, the clerk of superior court
12 in the county where the commitment originated shall transfer the file to
13 the clerk of superior court in the county where the outpatient
14 commitment is to be supervised."

15 Sec. 13. G.S. 122C-273(a)(4) reads as rewritten:

16 "(4) At any time that the outpatient treatment physician or center finds that
17 the respondent no longer meets the criteria set out in G.S. 122C-
18 263(d)(1), the physician or center shall so notify the court and the case
19 shall be terminated; provided, however, if the respondent was initially
20 committed as a result of conduct resulting in his being charged with a
21 violent crime, including a crime involving an assault with a deadly
22 weapon, and the respondent was found ~~not guilty by reason of insanity or~~
23 ~~incapable of proceeding~~, the designated outpatient treatment physician
24 or center shall notify the clerk that discharge is recommended. The
25 clerk shall calendar a supplemental hearing as provided in G.S. 122C-
26 274 to determine whether the respondent meets the criteria for
27 outpatient commitment."

28 Sec. 14. G.S. 122C-275(a) reads as rewritten:

29 "(a) Fifteen days before the end of the initial or subsequent periods of outpatient
30 commitment if the outpatient treatment physician or center determines that the
31 respondent continues to meet the criteria specified in G.S. 122C-263(d)(1), he shall so
32 notify the clerk of superior court of the county where the outpatient commitment is
33 supervised. If the respondent no longer meets the criteria, the physician shall so notify
34 the clerk who shall dismiss the case; provided, however, if the respondent was initially
35 committed as a result of conduct resulting in his being charged with a violent crime,
36 including a crime involving an assault with a deadly weapon, and the respondent was
37 found ~~not guilty by reason of insanity or~~
38 ~~incapable of proceeding~~, the physician or center
39 shall notify the clerk that discharge is recommended. The clerk, at least 10 days before
40 the end of the commitment period, on order of the district court, shall calendar the
41 rehearing."

42 Sec. 15. This act is effective upon ratification and applies to all hearings and
43 rehearings on discharge or conditional release occurring or after the date of
44 ratification for persons who were found not guilty by reason of insanity of commission
of a crime.