

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 759

Short Title: Guilty But Mentally Ill-2.

(Public)

Sponsors: Senators Cooper; Albertson, Ballantine, Kerr, Kinnaird, Lee, Martin of Guilford, McDaniel, Odom, Rand, and Winner.

Referred to: Judiciary.

April 8, 1997

A BILL TO BE ENTITLED

AN ACT TO CREATE THE VERDICT OF GUILTY BUT MENTALLY ILL AND TO PROVIDE FOR THE TREATMENT, MONITORING, AND SUPERVISION OF INSANITY ACQUITTEES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-17 reads as rewritten:

"§ 14-17. Murder in the first and second degree defined; punishment.

A murder which shall be perpetrated by means of poison, lying in wait, imprisonment, starving, torture, or by any other kind of willful, deliberate, and premeditated killing, or which shall be committed in the perpetration or attempted perpetration of any arson, rape or a sex offense, robbery, kidnapping, burglary, or other felony committed or attempted with the use of a deadly weapon shall be deemed to be murder in the first degree, a Class A felony, and any person who commits such murder shall be punished with death or imprisonment in the State's prison for life without parole as the court shall determine pursuant to G.S. 15A-2000, except that (i) any such person who was under 17 years of age at the time of the murder shall be punished with imprisonment in the State's prison for life without ~~parole~~ parole, and (ii) any such person who is found guilty but mentally ill under G.S. 14-17.2 shall be guilty of second degree murder and punished as a Class B2 felon. Provided, however, any person under the age of 17 who commits murder in the

1 first degree while serving a prison sentence imposed for a prior murder or while on
2 escape from a prison sentence imposed for a prior murder shall be punished with death or
3 imprisonment in the State's prison for life without parole as the court shall determine
4 pursuant to G.S. 15A-2000. All other kinds of murder, including that which shall be
5 proximately caused by the unlawful distribution of opium or any synthetic or natural salt,
6 compound, derivative, or preparation of opium, or cocaine or other substance described
7 in G.S. 90-90(a)4., when the ingestion of such substance causes the death of the user,
8 shall be deemed murder in the second degree, and any person who commits such murder
9 shall be punished as a Class B2 felon."

10 Section 2. Chapter 14 of the General Statutes is amended by adding a new
11 section to read:

12 **"§ 14-17.2. Guilty but mentally ill defined.**

13 (a) If a defendant charged with murder in the first degree asserts the defense of
14 insanity, the trier of fact shall find the defendant guilty but mentally ill if:

15 (1) The State proves beyond a reasonable doubt the elements of murder in
16 the first degree;

17 (2) The defendant fails to prove to the jury's satisfaction that the defendant
18 was insane; and

19 (3) The defendant proves to the jury's satisfaction that he or she, at the time
20 of the offense, had a mental disease or defect that substantially impaired
21 the defendant's ability to conform his or her conduct to the requirements
22 of law.

23 (b) 'Mental disease or defect,' as used in this section, does not include:

24 (1) An abnormality manifested only by repeated criminal or otherwise
25 antisocial conduct; or

26 (2) Behavior manifested only as a result of voluntary intoxication."

27 Section 3. The title of Article 80 of Chapter 15A of the General Statutes reads
28 as rewritten:

29 **"ARTICLE 80.**

30 **DEFENDANTS FOUND NOT GUILTY BY REASON OF ~~INSANITY.~~INSANITY**

31 **AND**

32 **DEFENDANTS FOUND GUILTY BUT MENTALLY ILL."**

33 Section 4. Article 80 of Chapter 15A of the General Statutes is amended by
34 adding a new section to read:

35 **"§ 15A-1323. Treatment for defendants found guilty but mentally ill.**

36 When a defendant charged with a crime is found guilty but mentally ill under G.S. 14-
37 17.2, the presiding judge shall include in the written commitment order, in addition to
38 that information required by G.S. 15A-1301, an order that the defendant receive a mental
39 health evaluation arranged for or provided by the Department of Correction. The
40 Department of Correction shall make available to the defendant during the period of
41 imprisonment any treatment consistent with the recommendations and findings of the
42 mental health evaluation. The order of the commitment shall require that, before the
43 defendant may be released from a term of imprisonment, the Department of Correction

1 must evaluate the defendant's mental condition and prepare a suitable community-based
2 treatment plan for implementation upon the defendant's release. The treatment plan shall
3 be prepared jointly by the Department of Correction and the area mental health,
4 developmental disabilities, and substance abuse authority serving the geographical area
5 where the defendant plans to reside. The treatment plan shall be specifically designed to
6 facilitate the return of the defendant to the community as a functioning, self-supporting
7 citizen, and may include intensive supervision, day reporting, monitored medications, and
8 appropriate supportive provisions for assistance in establishing residency, securing
9 gainful employment, undergoing needed vocational rehabilitation, and such other
10 outpatient services that appear beneficial."

11 Section 5. G.S. 122C-268.1(i) reads as rewritten:

12 "(i) The respondent shall bear the burden to prove by a preponderance of the
13 evidence that he (i) no longer has a mental illness as defined in G.S. 122C-3(21), or (ii) is
14 no longer dangerous to others as defined in G.S. 122C-3(11)b. If the court is so satisfied,
15 then the court shall order the respondent discharged and ~~released~~—released; provided,
16 however, that the court shall not discharge an individual who, as a result of medication or
17 hospitalization, is no longer dangerous to others, if it can be determined within
18 reasonable medical probability that without continued medication or supervised treatment
19 the respondent will suffer disability or deterioration that would result in dangerousness as
20 defined in G.S. 122C-3(11)b. Such an individual may only be released in accordance
21 with G.S. 122C-276.1(d). If the court finds that the respondent has not met his burden of
22 proof, then the court shall order that inpatient commitment continue at a 24-hour facility
23 designated pursuant to G.S. 122C-252 for a period not to exceed 90 days. The court shall
24 make a written record of the facts that support its findings."

25 Section 6. G.S. 122C-271(c) reads as rewritten:

26 "(c) If the respondent was found not guilty by reason of insanity and has been held
27 in a 24-hour facility pending the court hearing held pursuant to G.S. 122C-268.1, the
28 court may make one of the following dispositions:

29 (1) If the court finds that the respondent has not proved by a preponderance
30 of the evidence that he no longer has a mental illness or that he is no
31 longer dangerous to others, it shall order inpatient treatment at a 24-hour
32 facility for a period not to exceed 90 days.

33 (2) If the court finds that the respondent has proven by a preponderance of
34 the evidence that he no longer has a mental illness or that he is no longer
35 dangerous to others, the court shall order the respondent discharged and
36 ~~released~~—released; provided, however, that the court shall not discharge
37 an individual who is no longer dangerous to others as a result of
38 medication or hospitalization, if it can be determined within reasonable
39 medical probability that without continued medication or supervised
40 treatment the respondent will suffer disability or deterioration that
41 would result in dangerousness as defined in G.S. 122C-3(11)b. Such an
42 individual may only be released in accordance with the provisions for

1 conditional release in G.S. 122C-276.1 and shall remain under
2 commitment for a period not to exceed 90 days."

3 Section 7. G.S. 122C-276.1 reads as rewritten:

4 **"§ 122C-276.1. Inpatient commitment; rehearings for respondents who are insanity**
5 **acquittees.**

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

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

12 (c) The respondent shall bear the burden to prove by a preponderance of the
13 evidence that he (i) no longer has a mental illness as defined in G.S. 122C-3(21), or (ii) is
14 no longer dangerous to others as defined in G.S. 122C-3(11)b. ~~If the court is so satisfied,~~
15 ~~then the court shall order the respondent discharged and released.~~—If the court finds that the
16 respondent has not met his burden of proof, then the court shall order inpatient
17 commitment be continued for a period not to exceed 180 days. If the court finds that the
18 respondent has met his burden of proof, then the court shall order the respondent
19 discharged and released; provided, however, that the court shall not discharge an
20 individual who, as a result of medication or hospitalization, is no longer dangerous to
21 others, if it can be determined within reasonable medical probability that without
22 continued medication or supervised treatment the respondent will suffer disability or
23 deterioration that would result in dangerousness as defined in G.S. 122C-3(11)b. Such an
24 individual may only be conditionally released in accordance with subsections (d) through
25 (f) of this section. The court shall make a written record of the facts that support its
26 findings.

27 (d) If the court finds that the respondent meets the criteria for discharge by proving
28 by a preponderance of the evidence that he or she is no longer dangerous to others as
29 defined in G.S. 122C-3(11)b., but also finds within a reasonable medical probability that,
30 without continued medication or supervised treatment, the respondent will suffer
31 disability or deterioration that would result in dangerousness as defined in G.S. 122C-
32 3(11)b., the court shall order the respondent conditionally released in accordance with
33 this section. A conditional release order is a commitment order and is subject to the same
34 limitations on periods of time as commitment orders. Before ordering any conditional
35 release, the court shall make findings of fact that the respondent's mental illness can be
36 controlled with proper care, medication, supervision, or treatment if he or she is
37 conditionally released.

38 (e) If the court orders conditional release of the respondent in accordance with
39 subsection (d) of this section, the court shall, in addition to any other conditions of
40 release, order the respondent to report to an area authority or other facility designated by
41 the Secretary for the treatment and supervision of individuals conditionally released
42 under this section. As a condition of release, the court also shall order the respondent to
43 continue to receive periodic psychiatric or psychological treatment, as prescribed and

1 administered by the designated area authority or facility, and to take any medication
2 prescribed as a part of that treatment. The area authority or other facility designated to
3 treat and supervise the respondent shall monitor and document the respondent's
4 compliance with prescribed treatment.

5 (f) In order to ensure the safety and welfare of the citizenry of the State and a
6 respondent who is to be conditionally released, the court may permit the facility where
7 the respondent has been committed, or other 24-hour facility designated by the Secretary,
8 to keep the respondent in custody for a period of time not to exceed 30 days in order to
9 permit sufficient time for the attending physician of the facility to prepare
10 recommendations to the court for a suitable community-based treatment program for the
11 respondent. The attending physician shall plan jointly with the area authority or other
12 facility designated to supervise the respondent's treatment. The treatment program shall
13 be specifically designed to facilitate the return of the respondent to the community as a
14 functioning, self-supporting citizen, and may include appropriate supportive provisions
15 for assistance in establishing residency, securing gainful employment, undergoing needed
16 vocational rehabilitation, receiving marital and family counseling, and such other
17 outpatient services that appear beneficial.

18 (g) If a respondent who is to be conditionally released will be residing in a county
19 outside the judicial district of the district court ordering conditional release, the court
20 shall transfer venue of the case to the district court of the other county and send a copy of
21 all of the court's records of the proceedings to the other court.

22 (d) (h) At least 15 days before the end of any commitment or conditional release
23 period ordered pursuant to ~~subsection~~ subsections (c) or (d) of this section and annually
24 thereafter, the clerk shall calendar the hearing and notify the parties as specified in G.S.
25 122C-264(d1). The procedures and standards for the rehearing are the same as under this
26 section. No third or subsequent inpatient recommitment order or conditional release order
27 shall be for a period longer than one year."

28 Section 8. Chapter 122C of the General Statutes is amended by adding a new
29 section to read:

30 "**§ 122C-278. Revocation of conditional release.**

31 (a) The court may order revocation of a conditional release ordered pursuant to
32 G.S. 122C-276.1 if the court finds after hearing evidence that:

33 (1) The conditions of release have not been fulfilled;

34 (2) The respondent is dangerous to others; or

35 (3) Based on the respondent's behavior or condition during the period of
36 conditional release and the respondent's past mental health history, there
37 is a substantial likelihood that the respondent suffers from a mental
38 illness that causes him or her to present:

39 a. Substantial risk of serious bodily harm to the respondent or
40 others;

41 b. An imminent threat of physical injury to the respondent or
42 others; or

43 c. A substantial risk of extreme destruction of property.

1 (b) The court may retain jurisdiction to revoke a conditional release for as long as
2 continued involuntary treatment is necessary to prevent reoccurrence of the respondent's
3 mental illness and dangerousness.

4 (c) When the court finds that the conditional release should be revoked, the court
5 shall immediately order the respondent recommitted to the custody of the Department,
6 subject to discharge or release only in accordance with the procedures provided in G.S.
7 122C-276.1."

8 Section 9. This act becomes effective December 1, 1997, and applies to
9 offenses committed on or after that date.