

March 24, 2009

S 794. SEX OFFENDER/INCAPACITY TO PROCEED. Filed 3/24/09. *TO PROVIDE FOR THE CIVIL COMMITMENT OF CERTAIN SEX OFFENDERS WHO LACK THE CAPACITY TO PROCEED TO TRIAL.*

Adds GS Chapter 122F to establish a civil commitment process for defendants who are charged with a sex offense, found incapable of proceeding to trial, and determined to have a mental abnormality (sex offender). Defines sex offense to include any one of a list of 20 offenses committed against a child less than 16 years of age, the solicitation or conspiracy to commit any of these offenses, or the aiding and abetting of any offense. Defines mental abnormality as a mental condition affecting a person's emotional or volitional capacity that predisposes the person to commit sex offenses in a degree constituting such person a menace to the health and safety of others. The term includes a personality disorder that makes the person likely to engage in repeat sex offenses if not confined in a secure facility for long-term control, care, and treatment.

Defendants charged with a sex offense and found incapable of proceeding to trial may be referred for civil commitment under GS 122F by either a court pursuant to new GS 15A-1003.1 or by a facility, institution, or agency that has custody of the defendant pursuant to new GS 122F-4. GS 15A-1003.1 requires the presiding judge, when a defendant charged with a sex offense is found incapable of proceeding, to determine whether there are reasonable grounds to believe the defendant meets the criteria for involuntary commitment under Part 7 of Article 5 of GS 122C (mentally ill and dangerous to self or others) or the criteria for commitment as a sex offender under GS 122F. If the judge finds reasonable grounds to believe the defendant meets the criteria, the judge must make findings of fact and issue a custody order that requires a law enforcement officer to take the defendant directly to a 24-hour facility designated pursuant to GS 122C-252 for purposes of receiving commitment respondents. The order must indicate that the defendant was charged with a sex offense and found incapable of proceeding. Proceedings thereafter are in accordance with Part 7 of Article 5 of GS Chapter 122C except, if the physician conducting the examination finds that the defendant does not meet the criteria for involuntary commitment under those statutes, the physician must determine whether the defendant has a mental abnormality and, if so, report that determination to the court, which in turn refers the case for review to the Prosecutor's Review Committee (PRC) and the Attorney General for possible commitment under GS Chapter 122F. The 24-hour facility must hold the defendant until the PRC and Attorney General review the case and determine whether to file a petition for commitment under GS 122F. If the Attorney General declines to file a petition under GS 122F, then the court must order the defendant released or otherwise committed as appropriate.

Sets compositional requirements and procedure for appointment of PRC by the Attorney General. PRC must review cases referred to it and for each person for whom PRC receives notice of a pending release under new GS 122F-4 for determination whether probable cause exists to believe a defendant is a sexual predator. Where probable cause is found, the Attorney General must file a petition with the court in the jurisdiction where the offense was committed and notify the victim or victim's parent or legal guardian. The court must determine whether probable cause exists to believe the person is a sexual predator. The defendant must be given notice and opportunity to be heard at a hearing to contest probable cause and has the right to be represented by counsel, to present evidence, to cross-examine witnesses, and to view and copy all petitions and reports in the court file. If the judge finds probable cause, the court must order the defendant to an appropriate secure facility for examination by a qualified expert approved by the court to determine whether the defendant is a sexual predator.

Within 60 days of the court's probable cause hearing, a trial must be conducted (procedures set forth in new GS 122F-8 and 122F-9) to determine first whether the person committed the act with which he or she was charged and, if so, whether the person is a sexual predator. If the court finds that the defendant committed the charged offense, the court or jury must determine whether the defendant is a sexual offender. If the defendant is not found beyond a reasonable doubt both to have committed the offense charged and to be a sexual predator, the defendant must be released. If the defendant is found to have committed the act and to be a sexual predator, the defendant must be committed to the custody of the Department of Health and Human Services. Annually, committed defendants must have a mental examination and a judicial hearing to review the defendant's status. If the court finds probable cause to believe that the defendant's mental

abnormality has changed and that the defendant is safe to release, the court must schedule a trial in the issue.

Enacts new GS 15A-1010 requiring the court to determine whether a defendant's case was or should be referred for review under GS Chapter 122F before dismissing the charges against a defendant charged with a sex offense who is found incapable of proceeding to trial.

Contains other provisions related to the dissemination of evidentiary records, the registration of defendants released from custody, and the trial of defendants who gain the capacity to proceed to trial. Makes conforming changes.

Effective September 1, 2009, and applies to any defendant charged with a sex offense and found incapable of proceeding to trial on or after September 1, 2009, if the defendant has a mental abnormality, unless the charge was dismissed under GS 15A-1008 before September 1, 2009.

Intro. by Rand.

GS 14, 15A, 122C, 122F