

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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HOUSE BILL 243  
Committee Substitute Favorable 5/11/09  
PROPOSED COMMITTEE SUBSTITUTE H243-PCS50705-RF-51

Short Title: Mental Health/Law Enforcement Custody. (Public)

Sponsors:

Referred to:

February 23, 2009

1 A BILL TO BE ENTITLED  
2 AN ACT TO AUTHORIZE THE FACILITY OF FIRST COMMITMENT EXAMINATION  
3 TO TERMINATE THE INPATIENT COMMITMENT PROCEEDINGS IN  
4 APPROPRIATE CIRCUMSTANCES WHEN A TWENTY-FOUR-HOUR FACILITY IS  
5 NOT AVAILABLE.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** G.S. 122C-261(d) reads as rewritten:

8 "(d) If the affiant is a physician or eligible psychologist, the affiant may execute the  
9 affidavit before any official authorized to administer oaths. This affiant is not required to  
10 appear before the clerk or magistrate for this purpose. This affiant shall file the affidavit with  
11 the clerk or magistrate by delivering to the clerk or magistrate the original affidavit or a copy in  
12 paper form that is printed through the facsimile transmission of the affidavit. If the affidavit is  
13 filed through facsimile transmission, the affiant shall mail the original affidavit no later than  
14 five days after the facsimile transmission of the affidavit to the clerk or magistrate to be filed  
15 by the clerk or magistrate with the facsimile copy of the affidavit. This affiant's examination  
16 shall comply with the requirements of the initial examination as provided in G.S. 122C-263(c).  
17 If the physician or eligible psychologist recommends outpatient commitment and the clerk or  
18 magistrate finds probable cause to believe that the respondent meets the criteria for outpatient  
19 commitment, the clerk or magistrate shall issue an order that a hearing before a district court  
20 judge be held to determine whether the respondent will be involuntarily committed. The  
21 physician or eligible psychologist shall provide the respondent with written notice of any  
22 scheduled appointment and the name, address, and telephone number of the proposed  
23 outpatient treatment physician or center. If the physician or eligible psychologist recommends  
24 inpatient commitment and the clerk or magistrate finds probable cause to believe that the  
25 respondent meets the criteria for inpatient commitment, the clerk or magistrate shall issue an  
26 order for transportation to or custody at a 24-hour facility described in  
27 G.S. ~~122C-252~~, 122C-252, provided that if a 24-hour facility is not immediately available or  
28 appropriate to the respondent's medical condition, the respondent may be temporarily detained  
29 under appropriate supervision and, upon further examination, released in accordance with  
30 G.S. 122C-263(d)(2). However, if If the clerk or magistrate finds probable cause to believe that  
31 the respondent, in addition to being mentally ill, is also mentally retarded, the clerk or  
32 magistrate shall contact the area authority before issuing the order and the area authority shall  
33 designate the facility to which the respondent is to be transported. If a physician or eligible



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1 psychologist executes an affidavit for inpatient commitment of a respondent, a second  
2 physician shall be required to perform the examination required by G.S. 122C-266."

3 **SECTION 2.** G.S. 122C-263(d) reads as rewritten:

4 "**§ 122C-263. Duties of law-enforcement officer; first examination by physician or eligible**  
5 **psychologist.**

6 ...

7 (d) After the conclusion of the examination the physician or eligible psychologist shall  
8 make the following determinations:

9 (1) If the physician or eligible psychologist finds that:

- 10 a. The respondent is mentally ill;  
11 b. The respondent is capable of surviving safely in the community with  
12 available supervision from family, friends, or others;  
13 c. Based on the respondent's psychiatric history, the respondent is in  
14 need of treatment in order to prevent further disability or  
15 deterioration that would predictably result in dangerousness as  
16 defined by G.S. 122C-3(11); and  
17 d. The respondent's current mental status or the nature of the  
18 respondent's illness limits or negates the respondent's ability to make  
19 an informed decision to seek voluntarily or comply with  
20 recommended treatment.

21 The physician or eligible psychologist shall so show on the examination  
22 report and shall recommend outpatient commitment. In addition the  
23 examining physician or eligible psychologist shall show the name, address,  
24 and telephone number of the proposed outpatient treatment physician or  
25 center. The person designated in the order to provide transportation shall  
26 return the respondent to the respondent's regular residence or, with the  
27 respondent's consent, to the home of a consenting individual located in the  
28 originating county, and the respondent shall be released from custody.

29 (2) If the physician or eligible psychologist finds that the respondent is mentally  
30 ill and is dangerous to self, as defined in G.S. 122C-3(11)a., or others, as  
31 defined in G.S. 122C-3(11)b., the physician or eligible psychologist shall  
32 recommend inpatient commitment, and shall so show on the examination  
33 report. If, in addition to mental illness and dangerousness, the physician or  
34 eligible psychologist also finds that the respondent is known or reasonably  
35 believed to be mentally retarded, this finding shall be shown on the report.  
36 The law enforcement officer or other designated person shall take the  
37 respondent to a 24-hour facility described in G.S. 122C-252 pending a  
38 district court hearing. If there is no area 24-hour facility and if the  
39 respondent is indigent and unable to pay for care at a private 24-hour  
40 facility, the law enforcement officer or other designated person shall take the  
41 respondent to a State facility for the mentally ill designated by the  
42 Commission in accordance with G.S. 143B-147(a)(1)a. for custody,  
43 observation, and treatment and immediately notify the clerk of superior court  
44 of this action. If a 24-hour facility is not immediately available or  
45 appropriate to the respondent's medical condition, the respondent may be  
46 temporarily detained under appropriate supervision at the site of the first  
47 examination, provided that at anytime that a physician or eligible  
48 psychologist determines that the respondent is no longer in need of inpatient  
49 commitment, the proceedings shall be terminated and the respondent  
50 transported and released in accordance with subdivision (3) of this  
51 subsection. However, if the physician or eligible psychologist determines

1 that the respondent meets the criteria for outpatient commitment, as defined  
2 in subdivision (1) of this subsection, the physician or eligible psychologist  
3 may recommend outpatient commitment, and the respondent shall be  
4 transported and released in accordance with subdivision (1) of this  
5 subsection. Any decision to terminate the proceedings or to recommend  
6 outpatient commitment after an initial recommendation of inpatient  
7 commitment shall be documented and reported to the clerk of superior court  
8 in accordance with subsection (e) of this section. If the respondent continues  
9 to meet the criteria for inpatient commitment but a 24-hour facility is not  
10 available or medically appropriate seven days after the issuance of the  
11 custody order, a physician or psychologist shall report this fact to the clerk  
12 of superior court, and the proceedings shall be terminated.

13 In the event an individual known or reasonably believed to be mentally  
14 retarded is transported to a State facility for the mentally ill, in no event shall  
15 that individual be admitted to that facility except as follows:

- 16 a. Persons described in G.S. 122C-266(b);  
17 b. Persons admitted pursuant to G.S. 15A-1321;  
18 c. Respondents who are so extremely dangerous as to pose a serious  
19 threat to the community and to other patients committed to non-State  
20 hospital psychiatric inpatient units, as determined by the Director of  
21 the Division of Mental Health, Developmental Disabilities, and  
22 Substance Abuse Services or his designee; and  
23 d. Respondents who are so gravely disabled by both multiple disorders  
24 and medical fragility or multiple disorders and deafness that  
25 alternative care is inappropriate, as determined by the Director of the  
26 Division of Mental Health, Developmental Disabilities, and  
27 Substance Abuse Services or his designee.

28 Individuals transported to a State facility for the mentally ill who are not  
29 admitted by the facility may be transported by law enforcement officers or  
30 designated staff of the State facility in State-owned vehicles to an  
31 appropriate 24-hour facility that provides psychiatric inpatient care.

32 No later than 24 hours after the transfer, the responsible professional at  
33 the original facility shall notify the petitioner, the clerk of court, and, if  
34 consent is granted by the respondent, the next of kin, that the transfer has  
35 been completed.

- 36 (3) If the physician or eligible psychologist finds that neither condition  
37 described in subdivisions (1) or (2) of this subsection exists, the proceedings  
38 shall be terminated. The person designated in the order to provide  
39 transportation shall return the respondent to the respondent's regular  
40 residence or, with the respondent's consent, to the home of a consenting  
41 individual located in the originating county and the respondent shall be  
42 released from custody."

43 **SECTION 3.** Section 1(5) of S.L. 2003-178, as amended by Section 10.27 of S.L.  
44 2006-66, and as further amended by Section 1.1(a)(5) of S.L. 2007-504, reads as rewritten:

45 "(5) The Secretary may grant a waiver under this section to up to ~~10~~15 LMEs."

46 **SECTION 4.** Section 3 of this act becomes effective July 1, 2009. The remainder  
47 of this act becomes effective October 1, 2009.