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PROPOSED SENATE COMMITTEE SUBSTITUTE H243-PCS50747-RD-69

Short Title: Mental Health/Law Enforcement Custody.

(Public)

Sponsors:

Referred to:

February 23, 2009

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE FACILITY OF FIRST COMMITMENT EXAMINATION
TO TERMINATE THE INPATIENT COMMITMENT PROCEEDINGS IN
APPROPRIATE CIRCUMSTANCES WHEN A TWENTY-FOUR-HOUR FACILITY IS
NOT AVAILABLE.

The General Assembly of North Carolina enacts:

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

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



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1 magistrate shall contact the area authority before issuing the order and the area authority shall
2 designate the facility to which the respondent is to be transported. If a physician or eligible
3 psychologist executes an affidavit for inpatient commitment of a respondent, a second
4 physician shall be required to perform the examination required by G.S. 122C-266."

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

6 "**§ 122C-263. Duties of law-enforcement officer; first examination by physician or eligible**
7 **psychologist.**

8 ...

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

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

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

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

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

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

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

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

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

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

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

45 **SECTION 3.** Section 1(5) of S.L. 2003-178, as amended by Section 10.27 of S.L.
46 2006-66, and as further amended by Section 1.1(a)(5) of S.L. 2007-504, reads as rewritten:

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

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