

GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION

CHAPTER 823
HOUSE BILL 992

AN ACT TO CLARIFY THE MENTAL HEALTH LAW'S REFERENCES TO
PERSONS DANGEROUS TO THEMSELVES AND OTHERS AND TO ADD A
DEFINITION OF SEVERE AND PERSISTENT MENTAL ILLNESS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 122C-161(a) reads as rewritten:

"(a) Anyone who has knowledge of an individual who is: (i) mentally ill and either dangerous to ~~himself or others~~ himself, as defined in G.S. 122C-3(11)a., or others, as defined in G.S. 122C-3(11)b., or in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness, or (ii) mentally retarded and, because of an accompanying behavior disorder, is dangerous to others, as defined in G.S. 122C-3(11)b., may appear before a clerk or assistant or deputy clerk of superior court or a magistrate and execute an affidavit to this effect, and petition the clerk or magistrate for issuance of an order to take the respondent into custody for examination by a physician or eligible psychologist. The affidavit shall include the facts on which the affiant's opinion is based. Jurisdiction under this subsection is in the clerk or magistrate in the county where the respondent resides or is found."

Sec. 2. G.S. 122C-261(b) reads as rewritten:

"(b) If the clerk or magistrate finds reasonable grounds to believe that the facts alleged in the affidavit are true and that the respondent is probably (i) mentally ill and either dangerous to ~~himself or others~~ himself, as defined in G.S. 122C-3(11)a., or others, as defined in G.S. 122C-3(11)b., or in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness, or (ii) mentally retarded and, because of an accompanying behavior disorder, is dangerous to others, as defined in G.S. 122C-3(11)b., he shall issue an order to a law-enforcement officer or any other person authorized under G.S. 122C-251 to take the respondent into custody for examination by a physician or eligible psychologist."

Sec. 3. G.S. 122C-263(c) reads as rewritten:

"(c) The physician or eligible psychologist described in subsection (a) of this section shall examine the respondent as soon as possible, and in any event within 24 hours, after the respondent is presented for examination. The examination shall include but is not limited to an assessment of the respondent's:

- (1) Current and previous mental illness or mental retardation including, if available, previous treatment history;

- (2) Dangerousness to ~~himself or others as defined in G.S. 122C-3(11)~~ himself, as defined in G.S. 122C-3(11)a. or others, as defined in G.S. 122C-3(11)b.;
- (3) Ability to survive safely without inpatient commitment, including the availability of supervision from family, friends or others; and
- (4) Capacity to make an informed decision concerning treatment."

Sec. 4. G.S. 122C-163(d) reads as rewritten:

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

- (1) If the physician or eligible psychologist finds that:
 - a. The respondent is mentally ill;
 - b. The respondent is capable of surviving safely in the community with available supervision from family, friends, or others;
 - c. Based on the respondent's treatment history, the respondent is in need of treatment in order to prevent further disability or deterioration which would predictably result in dangerousness as defined by G.S. 122C-3(11); and
 - d. His current mental status or the nature of his illness limits or negates his ability to make an informed decision to seek voluntarily or comply with recommended treatment;

The physician or eligible psychologist shall so show on [the] his examination report and shall recommend outpatient commitment. In addition the examining physician or eligible psychologist shall show the name, address, and telephone number of the proposed outpatient treatment physician or center. The person designated in the order to provide transportation shall return the respondent to his regular residence or to the home of a consenting individual, and he shall be released from custody.

- (2) If the physician or eligible psychologist finds that the respondent is mentally ill and is dangerous to ~~himself or others,~~ himself as defined in G.S. 122C-3(11)a., or others, as defined in G.S. 122C-3(11)b., or is mentally retarded, and because of an accompanying behavior disorder, is dangerous to others, as defined in G.S. 122C-3(11)b. he shall recommend inpatient commitment, and he shall so show on [the] his examination report. The law-enforcement officer or other designated person shall take the respondent to a 24-hour facility described in G.S. 122C-252 pending a district court hearing. If there is no area 24-hour facility and if the respondent is indigent and unable to pay for his care at a private 24-hour facility, the law-enforcement officer or other designated person shall take the respondent to a State facility for the mentally ill designated by the Commission in accordance with G.S. 143B-157(a)(1)a for custody, observation, and treatment and immediately notify the clerk of superior court of his actions.

- (3) If the physician or eligible psychologist finds that neither condition described in subdivisions (1) or (2) of this subsection exists, the respondent shall be released and the proceedings terminated."

Sec. 5. G.S. 122C-165(e) reads as rewritten:

"(e) If a respondent becomes dangerous to ~~himself or others~~ himself, as defined in G.S. 122C-3(11)a., or others, as defined in G.S. 122C-3(11)b., pending a district court hearing on outpatient commitment, new proceedings for involuntary inpatient commitment may be initiated."

Sec. 6. G.S. 122C-266(a) reads as rewritten:

"(a) Except as provided in subsections (b) and (e), within 24 hours of arrival at a 24-hour facility described in G.S. 122C-252, the respondent shall be examined by a physician. The examination shall include but is not limited to the assessment specified in G.S. 122C-263(c).

- (1) If the physician finds that the respondent is mentally ill and is dangerous to ~~himself or others~~ himself, as defined by G.S. 122C-3(11)a., or others, as defined in G.S. 122C-3(11)b., or is mentally retarded and, because of an accompanying behavior disorder, is dangerous to others, as defined in G.S. 122C-3(11)b., he shall hold the respondent at the facility pending the district court hearing.
- (2) If the physician finds that the respondent meets the criteria for outpatient commitment under G.S. 122C-263(d)(1), he shall show his findings on the physician's examination report, release the respondent pending the district court hearing, and notify the clerk of superior court of the county where the petition was initiated of his findings. In addition, the examining physician shall show on the examination report the name, address, and telephone number of the proposed outpatient treatment physician or center. He shall give the respondent a written notice listing the name, address, and telephone number of the proposed outpatient treatment physician or center and directing the respondent to appear at that address at a specified date and time. The examining physician before the appointment shall notify by telephone and shall send a copy of the notice and his examination report to the proposed outpatient treatment physician or center.
- (3) If the physician finds that the respondent does not meet the criteria for commitment under either G.S. 122C-263(d)(1) or G.S. 122C-263(d)(2), he shall release the respondent and the proceedings shall be terminated.
- (4) If the respondent is released under subdivisions (2) or (3) of this subsection, the law-enforcement officer or other person designated to provide transportation shall return the respondent to the originating county."

Sec. 7. G.S. 122C-268(j) reads as rewritten:

"(j) To support an inpatient commitment order, the court shall find by clear, cogent, and convincing evidence that the respondent is mentally ill and dangerous to

~~himself or others~~ himself, as defined in G.S. 122C-3(11)a., or others, as defined in G.S. 122C-3(11)b., or is mentally retarded and, because of an accompanying behavior disorder, is dangerous to ~~others~~ others, as defined in G.S. 122C-3(11)b. The court shall record the facts that support its findings."

Sec. 8. G.S. 122C-271(b) reads as rewritten:

"(b) If the respondent has been held in a 24-hour facility pending the district court hearing, the court may make one of the following dispositions:

- (1) If the court finds by clear, cogent, and convincing evidence that the respondent is mentally ill; that he is capable of surviving safely in the community with available supervision from family, friends, or others; that based on respondent's treatment history, the respondent is in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness as defined by G.S. 122C-3(11); and that the respondent's current mental status or the nature of his illness limits or negates his ability to make an informed decision voluntarily to seek or comply with recommended treatment, it may order outpatient commitment for a period not in excess of 90 days. If the commitment proceedings were initiated as the result of the respondent's being charged with a violent crime, including a crime involving an assault with a deadly weapon, and the respondent was found not guilty by reason of insanity or incapable of proceeding, the commitment order shall so show.
- (2) If the court finds by clear, cogent, and convincing evidence that the respondent is mentally ill and is dangerous to ~~himself or others~~ himself, as defined in G.S. 122C-3(11)a., or others, as defined in G.S. 122C-3(11)b., or is mentally retarded and, because of an accompanying behavior disorder, is dangerous to others, as defined in G.S. 122C-3(11)b., it may order inpatient commitment at a 24-hour facility described in G.S. 122C-252 for a period not in excess of 90 days. However, an individual who is mentally retarded and, because of an accompanying behavior disorder, is dangerous to ~~others~~ others, as defined in G.S. 122C-3(11)b., may not be committed to a State, area or private facility for the mentally retarded. An individual who is mentally ill and dangerous to ~~himself or others~~ himself, as defined in G.S. 122C-3(11)a., or others, as defined in G.S. 122C-3(11)b., may also be committed to a combination of inpatient and outpatient commitment at both a 24-hour facility and an outpatient treatment physician or center for a period not in excess of 90 days. If the commitment proceedings were initiated as the result of the respondent's being charged with a violent crime, including a crime involving an assault with a deadly weapon, and the respondent was found not guilty by reason of insanity or incapable of proceeding, the commitment order shall so show. If the court orders inpatient commitment for a respondent who is under an outpatient commitment

order, the outpatient commitment is terminated; and the clerk of the superior court of the county where the district court hearing is held shall send a notice of the inpatient commitment to the clerk of superior court where the outpatient commitment was being supervised.

- (3) If the court does not find that the respondent meets either of the commitment criteria set out in subdivisions (1) and (2) of this subsection, the respondent shall be discharged, and the facility in which he was last a client so notified.
- (4) Before ordering any outpatient commitment, the court shall make findings of fact as to the availability of outpatient treatment. The court shall also show on the order the outpatient treatment physician or center who is to be responsible for the management and supervision of the respondent's outpatient commitment. When an outpatient commitment order is issued for a respondent held in a 24-hour facility, the court may order the respondent held at the facility for no more than 72 hours in order for the facility to notify the designated outpatient treatment physician or center of the treatment needs of the respondent. The clerk of court in the county where the facility is located shall send a copy of the outpatient commitment order to the designated outpatient treatment physician or center. If the outpatient commitment will be supervised in a county other than the county where the commitment originated, the court shall order venue for further court proceedings to be transferred to the county where the outpatient commitment will be supervised. Upon an order changing venue, the clerk of superior court in the county where the commitment originated shall transfer the file to the clerk of superior court in the county where the outpatient commitment is to be supervised."

Sec. 9. G.S. 122C-273(a) reads as rewritten:

"(a) Unless prohibited by Chapter 90 of the General Statutes, if the commitment order directs outpatient treatment, the outpatient treatment physician may prescribe or administer, or the center may administer, to the respondent reasonable and appropriate medication and treatment that are consistent with accepted medical standards.

- (1) If the respondent fails to comply or clearly refuses to comply with all or part of the prescribed treatment, the physician, the physician's designee, or the center shall make all reasonable effort to solicit the respondent's compliance. These efforts shall be documented and reported to the court with a request for a supplemental hearing.
- (2) If the respondent fails to comply, but does not clearly refuse to comply, with all or part of the prescribed treatment after reasonable effort to solicit the respondent's compliance, the physician, the physician's designee, or the center may request the court to order the respondent taken into custody for the purpose of examination. Upon receipt of this request, the clerk shall issue an order to a law-enforcement officer to take the respondent into custody and to take

him immediately to the designated outpatient treatment physician or center for examination. The law-enforcement officer shall turn the respondent over to the custody of the physician or center who shall conduct the examination and then release the respondent. The law-enforcement officer may wait during the examination and return the respondent to his home after the examination. An examination conducted under this subsection in which a physician or eligible psychologist determines that the respondent meets the criteria for inpatient commitment may be substituted for the first examination required by G.S. 122C- 263 if the clerk or magistrate issues a custody order within six hours after the examination was performed.

- (3) In no case may the respondent be physically forced to take medication or ~~forceably~~ forcibly detained for treatment unless he poses an immediate danger to himself or others. In such cases inpatient commitment proceedings shall be initiated.
- (4) At any time that the outpatient treatment physician or center finds that the respondent no longer meets the criteria set out in G.S. 122C-263(d)(1), the physician or center shall so notify the court and the case shall be terminated; provided, however, if the respondent was initially committed as a result of conduct resulting in his being charged with a violent crime, including a crime involving an assault with a deadly weapon, and the respondent was found not guilty by reason of insanity or incapable of proceeding, the designated outpatient treatment physician or center shall notify the clerk that discharge is recommended. The clerk shall calendar a supplemental hearing as provided in G.S. 122C-274 to determine whether the respondent meets the criteria for outpatient commitment.
- (5) Any individual who has knowledge that a respondent on outpatient commitment has become dangerous to ~~himself or others as defined by G.S. 122C-3(11)~~ himself, as defined by G.S. 122C-3(11)a., and others, as defined in G.S. 122C-3(11)b., may initiate a new petition for inpatient commitment as provided in this Part. If the respondent is committed as an inpatient, the outpatient commitment shall be terminated and notice sent by the clerk of court in the county where the respondent is committed as an inpatient to the clerk of court of the county where the outpatient commitment is being supervised."

Sec. 10. G.S. 122C-274(c) reads as rewritten:

"(c) In supplemental hearings for alleged noncompliance, the court shall determine whether the respondent has failed to comply and, if so, the causes for noncompliance. If the court determines that the respondent has failed or refused to comply it may:

- (1) Upon finding probable cause to believe that the respondent is mentally ill and dangerous to ~~himself or others,~~ himself, as defined in G.S. 122C-3(11)a., or others, as defined in G.S. 122C-3(11)b., order an

examination by the same or different physician or eligible psychologist as provided in G.S. 122C-263(c) in order to determine the necessity for continued outpatient or inpatient commitment;

- (2) Reissue or change the outpatient commitment order in accordance with G.S. 122C-271; or
- (3) Discharge the respondent from the order and dismiss the case."

Sec. 11. G.S. 122C-3 is amended by inserting a new subdivision to read:

"(33a) 'Severe and persistent mental illness' means a mental disorder suffered by persons of 18 years of age or older that leads these persons to exhibit emotional or behavioral functioning that is so impaired as to interfere substantially with their capacity to remain in the community without supportive treatment or services of a long term or indefinite duration. This disorder is a severe and persistent mental disability, resulting in a long-term limitation of functional capacities for the primary activities of daily living, such as interpersonal relations, homemaking, self-care, employment, and recreation."

Sec. 12. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 28th day of June, 1990.