

1 Statutes. However, if the defendant was charged with a violent crime, including a crime
2 involving assault with a deadly weapon, the judge's custody order shall require a law-
3 enforcement officer to take the defendant directly to a 24-hour facility as described in G.S.
4 122C-252; and the order must indicate that the defendant was charged with a violent crime and
5 that he was found not guilty by reason of insanity."

6 Sec. 2. Part 7 of Article 5 of Chapter 122C of the General Statutes is amended
7 by adding a new section to read:

8 **"§ 122C-268.1. Inpatient commitment; hearing following automatic commitment.**

9 (a) A respondent who is committed pursuant to G.S. 15A-1321 shall be provided
10 a hearing, unless waived, before the expiration of 50 days from the date of his
11 commitment.

12 (b) The district attorney in the county in which the respondent was found not
13 guilty by reason of insanity may represent the State's interest at the hearing. If the
14 district attorney declines to represent the State's interest, then the representation shall be
15 determined as follows. An attorney, who is a member of the staff of the Attorney
16 General assigned to one of the State's facilities for the mentally ill or the psychiatric
17 service of the University of North Carolina Hospitals at Chapel Hill, may represent the
18 State's interest at commitment hearings, rehearings, and supplemental hearings.
19 Alternatively, the Attorney General may, in his discretion, designate an attorney who is
20 a member of his staff to represent the State's interest at any commitment hearing,
21 rehearing, or supplemental hearing.

22 (c) The clerk shall give notice of the time and place of the hearing as provided in
23 G.S. 122C-264(d1).

24 (d) The respondent shall be represented by counsel of his choice, or if he is
25 indigent within the meaning of G.S. 7A-450 or refuses to retain counsel if financially
26 able to do so, he shall be represented by counsel appointed by the court.

27 (e) With the consent of the court, counsel may in writing waive the presence of
28 the respondent.

29 (f) Certified copies of reports and findings of physicians and psychologists and
30 previous and current medical records are admissible in evidence, but the respondent's
31 right to confront and cross-examine witnesses may not be denied.

32 (g) The hearing shall take place in the trial division in which the original trial was
33 held. The hearing shall be open to the public. For purposes of this subsection, 'trial
34 division' means either the superior court division or the district court division of the
35 General Court of Justice.

36 (h) A copy of all documents admitted into evidence and a transcript of the
37 proceedings shall be furnished to the respondent on request by the clerk upon the
38 direction of the presiding judge. If the respondent is indigent, the copies shall be
39 provided at State expense.

40 (i) The respondent shall bear the burden to prove by a preponderance of the
41 evidence that he is no longer dangerous to himself or others. If the court is so satisfied,
42 then the respondent shall bear the burden to prove by a preponderance of the evidence
43 that he does not have a mental illness. If the court is so satisfied, then the court shall
44 order the respondent discharged and released. If the court finds that the respondent has

1 not met his burdens of proof, then the court shall order that inpatient commitment
2 continue at a 24-hour facility designated pursuant to G.S. 122C-252 for a period not to
3 exceed 90 days.

4 (j) Nothing in this section shall limit the respondent's right to **habeas corpus**
5 relief."

6 Sec. 3. Part 7 of Article 5 of Chapter 122C of the General Statutes is amended
7 by adding a new section to read:

8 **"§ 122C-276.1. Inpatient commitment; rehearings for respondents who are insanity**
9 **acquittees.**

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

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

15 (c) The respondent shall bear the burden to prove by a preponderance of the
16 evidence that he is no longer dangerous to himself or others. If the court is so satisfied,
17 then the respondent shall bear the burden to prove by a preponderance of the evidence
18 that he does not have a mental illness. If the court is so satisfied, then the court shall
19 order the respondent discharged and released. If the court finds that the respondent has
20 not met his burdens of proof, then the court shall order inpatient commitment be
21 continued for a period not to exceed 180 days.

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

27 Sec. 4. G.S. 122C-264 reads as rewritten:

28 **"§ 122C-264. Duties of clerk of superior court and the district attorney.**

29 (a) Upon receipt of a physician's or eligible psychologist's finding that the
30 respondent meets the criteria of G.S. 122C-263(d)(1) and that outpatient commitment is
31 recommended, the clerk of superior court of the county where the petition was initiated,
32 upon direction of a district court judge, shall calendar the matter for hearing and shall
33 notify the respondent, the proposed outpatient treatment physician or center, and the
34 petitioner of the time and place of the hearing. The petitioner may file a written waiver
35 of his right to notice under this subsection with the clerk of court.

36 (b) Upon receipt of a physician's or eligible psychologist's finding that a
37 respondent meets the criteria of G.S. 122C-263(d)(2) and that inpatient commitment is
38 recommended, the clerk of superior court of the county where the 24-hour facility is
39 located shall, after determination required by G.S. 122C-261(c) and upon direction of a
40 district court judge, assign counsel if necessary, calendar the matter for hearing, and
41 notify the respondent, his counsel, and the petitioner of the time and place of the
42 hearing. The petitioner may file a written waiver of his right to notice under this
43 subsection with the clerk of court.

1 (b1) Upon receipt of a physician's or eligible psychologist's certificate that a
2 respondent meets the criteria of G.S. 122C-261(a) and that immediate hospitalization is
3 needed, the clerk of superior court of the county where the 24-hour facility is located
4 shall submit the certificate to the Chief District Court Judge. The court shall review the
5 certificate within 24 hours (excluding Saturday, Sunday and holidays) for a finding of
6 reasonable grounds in accordance with 122C-261(b). The clerk shall notify the 24-hour
7 facility of the court's findings by telephone and shall proceed as set forth in (b), (c) and
8 (f) of this section.

9 (c) Notice to the respondent, required by subsections (a) and (b) of this section,
10 shall be given as provided in G.S. 1A-1, Rule 4(j) at least 72 hours before the hearing.
11 Notice to other individuals shall be sent at least 72 hours before the hearing by first-
12 class mail postage prepaid to the individual's last known address. G.S. 1A-1, Rule 6
13 shall not apply.

14 (d) In cases described in G.S. 122C-266(b) in addition to notice required in
15 subsections (a) and (b) of this section, the clerk of superior court shall notify the chief
16 district judge and the district attorney in the county in which the defendant was found
17 ~~not guilty by reason of insanity or incapable of proceeding~~. The notice shall be given in the
18 same way as the notice required by subsection (c) of this section. The judge or the
19 district attorney may file a written waiver of his right to notice under this subsection
20 with the clerk of court.

21 (d1) For hearings and rehearings pursuant to G.S. 122C-268.1 and G.S. 122C-
22 276.1, the clerk of superior court shall calendar the hearing or rehearing and shall notify
23 the respondent, his counsel, counsel for the State, and the district attorney involved in
24 the original trial. The notice shall be given in the same manner as the notice required by
25 subsection (c) of this section. Upon receipt of the notice, the district attorney shall notify
26 any persons he deems appropriate, including anyone who has filed with his office a
27 written request for notification of any hearing or rehearing concerning discharge or
28 conditional release of a respondent. Notice sent by the district attorney shall be by first-
29 class mail to the person's last known address.

30 (e) The clerk of superior court of the county where outpatient commitment is to
31 be supervised shall keep a separate list regarding outpatient commitment and shall
32 prepare quarterly reports listing all active cases, the assigned supervisor, and the
33 disposition of all hearings, supplemental hearings, and rehearings.

34 (f) The clerk of superior court of the county where inpatient commitment
35 hearings and rehearings are held shall provide all notices, send all records and maintain
36 a record of all proceedings as required by this Part; provided that if the respondent has
37 been committed to a 24-hour facility in a county other than his county of residence and
38 the district court hearing is held in the county of the facility, the clerk of superior court
39 in the county of the facility shall forward the record of the proceedings to the clerk of
40 superior court in the county of respondent's residence, where they shall be maintained
41 by receiving clerk."

42 Sec. 5. G.S. 122C-276 reads as rewritten:

43 "**§ 122C-276. Inpatient commitment; rehearings for respondents other than**
44 **insanity acquittees.**

1 (a) Fifteen days before the end of the initial inpatient commitment period if the
2 attending physician determines that commitment of a respondent beyond the initial
3 period will be necessary, he shall so notify the clerk of superior court of the county in
4 which the facility is located. The clerk, at least 10 days before the end of the initial
5 period, on order of a district court judge of the district court district as defined in G.S.
6 7A-133 in which the facility is located, shall calendar the rehearing. If the respondent
7 was initially committed as the result of conduct resulting in his being charged with a
8 violent crime, including a crime involving an assault with a deadly weapon, and
9 respondent was found ~~not guilty by reason of insanity or incapable of proceeding~~, the clerk
10 shall also notify the chief district court judge, the clerk of superior court, and the district
11 attorney in the county in which the respondent was found ~~not guilty by reason of insanity~~
12 ~~or incapable of proceeding~~ of the time and place of the hearing.

13 (b) Fifteen days before the end of the initial treatment period of a respondent who
14 was initially committed as a result of conduct resulting in his being charged with a
15 violent crime, including a crime involving an assault with a deadly weapon, having been
16 found ~~not guilty by reason of insanity or incapable of proceeding~~, if the attending
17 physician determines that commitment of the respondent beyond the initial period will
18 not be necessary, he shall so notify the clerk of superior court who shall schedule a
19 rehearing as provided in subsection (a) of this section.

20 (c) Subject to the provisions of G.S. 122C-269(c), rehearings shall be held at the
21 facility in which the respondent is receiving treatment. The judge is a judge of the
22 district court of the district court district as defined in G.S. 7A-133 in which the facility
23 is located or a district court judge temporarily assigned to that district.

24 (d) Notice and proceedings of rehearings are governed by the same procedures as
25 initial hearings and the respondent has the same rights he had at the initial hearing
26 including the right to appeal.

27 (e) At rehearings the court may make the same dispositions authorized in G.S.
28 122C-271(b) except a second commitment order may be for an additional period not in
29 excess of 180 days.

30 (f) Fifteen days before the end of the second commitment period and annually
31 thereafter, the attending physician shall review and evaluate the condition of each
32 respondent; and if he determines that a respondent is in continued need of inpatient
33 commitment or, in the alternative, in need of outpatient commitment, or a combination
34 of both, he shall so notify the respondent, his counsel, and the clerk of superior court of
35 the county, in which the facility is located. Unless the respondent through his counsel
36 files with the clerk a written waiver of his right to a rehearing, the clerk, on order of a
37 district court judge of the district in which the facility is located, shall calendar a
38 rehearing for not later than the end of the current commitment period. The procedures
39 and standards for the rehearing are the same as for the first rehearing. No third or
40 subsequent inpatient recommitment order shall be for a period longer than one year.

41 (g) At any rehearings the court has the option to order outpatient commitment for
42 a period not in excess of 180 days in accordance with the criteria specified in G.S.
43 122C-263(d)(1) and following the procedures as specified in this Article."

44 Sec. 6. G.S. 122C-277 reads as rewritten:

1 **"§ 122C-277. Release and conditional release; judicial review.**

2 (a) Except as provided in ~~subsection~~subsections (b) and (b1) of this section, the
3 attending physician shall discharge a committed respondent unconditionally at any time
4 he determines that the respondent is no longer in need of inpatient commitment.
5 However, if the attending physician determines that the respondent meets the criteria for
6 outpatient commitment as defined in G.S. 122C-263(d)(1), he may request the clerk to
7 calendar a supplemental hearing to determine whether an outpatient commitment order
8 shall be issued. Except as provided in ~~subsection~~subsections (b) and (b1) of this section,
9 the attending physician may also release a respondent conditionally for periods not in
10 excess of 30 days on specified medically appropriate conditions. Violation of the
11 conditions is grounds for return of the respondent to the releasing facility. A law-
12 enforcement officer, on request of the attending physician, shall take a conditional
13 releasee into custody and return him to the facility in accordance with G.S. 122C-205.
14 Notice of discharge and of conditional release shall be furnished to the clerk of superior
15 court of the county of commitment and of the county in which the facility is located.

16 (b) If the respondent was initially committed as the result of conduct resulting in
17 his being charged with a violent crime, including a crime involving an assault with a
18 deadly weapon, and respondent was found ~~not guilty by reason of insanity or incapable of~~
19 proceeding, 15 days before the respondent's discharge or conditional release the
20 attending physician shall notify the clerk of superior court of the county in which the
21 facility is located of his determination regarding the proposed discharge or conditional
22 release. The clerk shall then schedule a rehearing to determine the appropriateness of
23 respondent's release under the standards of commitment set forth in G.S. 122C-271(b).
24 The clerk shall give notice as provided in G.S. 122C-264(d). The district attorney of the
25 district where respondent was found ~~not guilty by reason of insanity or incapable of~~
26 proceeding may represent the State's interest at the hearing.

27 (b1) If the respondent was initially committed pursuant to G.S. 15A-1321, 15 days
28 before the respondent's discharge or conditional release the attending physician shall
29 notify the clerk of superior court. The clerk shall calendar a hearing and shall give
30 notice as provided by G.S. 122C-264(d1). The district attorney for the original trial may
31 represent the State's interest at the hearing. The hearing shall be conducted under the
32 standards and procedures set forth in G.S. 122C-268.1. Provided, that in no event shall
33 discharge or conditional release under this section be allowed for a respondent during
34 the period from automatic commitment to hearing under G.S. 122C-268.1.

35 (c) If a committed respondent under ~~either subsection (a) or (b)~~subsections (a), (b),
36 or (b1) of this section is from a single portal area, the attending physician shall plan
37 jointly with the area authority as prescribed in the area plan before discharging or
38 releasing the respondent."

39 Sec. 7. G.S. 122C-261(e) reads as rewritten:

40 "(e) Upon receipt of the custody order of the clerk or magistrate or a custody order
41 issued by the court pursuant to G.S. 15A-1003 ~~or G.S. 15A-1321~~, a law-enforcement
42 officer or other person designated in the order shall take the respondent into custody
43 within 24 hours after the order is signed, and proceed according to G.S. 122C-263."

44 Sec. 8. G.S. 122C-263(b) reads as rewritten:

- 1 (b) The examination set forth in subsection (a) of this section is not required if:
- 2 (1) The affiant who obtained the custody order is a physician or eligible
- 3 psychologist who recommends inpatient commitment;
- 4 (2) The custody order states that the respondent was charged with a
- 5 violent crime, including a crime involving assault with a deadly
- 6 weapon, and he was found ~~not guilty by reason of insanity or~~ incapable
- 7 of proceeding; or
- 8 (3) Repealed by Session Laws 1987, c. 596, s. 3.

9 In any of these cases, the law-enforcement officer shall take the respondent directly to a

10 24-hour facility described in G.S. 122C-252."

11 Sec. 9. G.S. 122C-266(b) reads as rewritten:

12 (b) If the custody order states that the respondent was charged with a violent

13 crime, including a crime involving assault with a deadly weapon, and that he was found

14 ~~not guilty by reason of insanity or~~ incapable of proceeding, the physician shall examine

15 him as set forth in subsection (a) of this section. However, the physician may not release

16 him from the facility until ordered to do so following the district court hearing."

17 Sec. 10. G.S. 122C-268(c) reads as rewritten:

18 (c) If the respondent's custody order indicates that he was charged with a violent

19 crime, including a crime involving an assault with a deadly weapon, and that he was

20 found ~~not guilty by reason of insanity or~~ incapable of proceeding, the clerk shall give

21 notice of the time and place of the hearing as provided in G.S. 122C-264(d). The district

22 attorney in the county in which the respondent was found not guilty by reason of

23 insanity or incapable of proceeding may represent the State's interest at the hearing."

24 Sec. 11. G.S. 122C-269(c) reads as rewritten:

25 (c) Upon motion of any interested person, the venue of an initial hearing described

26 in G.S. 122C-268(c) or G.S. 122C-268.1 or a rehearing required by G.S. 122C-276(b),

27 G.S. 122C-276.1, or ~~G.S. 122C-277(b)~~ subsections (b) or (b1) of G.S. 122C-277 shall be

28 moved to the county in which the respondent was found ~~not guilty by reason of insanity or~~

29 incapable of proceeding when the convenience of witnesses and the ends of justice

30 would be promoted by the change."

31 Sec. 12. G.S. 122C-271(b) reads as rewritten:

32 (b) If the respondent has been held in a 24-hour facility pending the district court

33 hearing pursuant to G.S. 122C-268, the court may make one of the following

34 dispositions:

- 35 (1) If the court finds by clear, cogent, and convincing evidence that the
- 36 respondent is mentally ill; that he is capable of surviving safely in the
- 37 community with available supervision from family, friends, or others;
- 38 that based on respondent's psychiatric history, the respondent is in
- 39 need of treatment in order to prevent further disability or deterioration
- 40 that would predictably result in dangerousness as defined by G.S.
- 41 122C-3(11); and that the respondent's current mental status or the
- 42 nature of his illness limits or negates his ability to make an informed
- 43 decision voluntarily to seek or comply with recommended treatment, it
- 44 may order outpatient commitment for a period not in excess of 90

1 days. If the commitment proceedings were initiated as the result of the
2 respondent's being charged with a violent crime, including a crime
3 involving an assault with a deadly weapon, and the respondent was
4 found ~~not guilty by reason of insanity or~~ incapable of proceeding, the
5 commitment order shall so show.

6 (2) If the court finds by clear, cogent, and convincing evidence that the
7 respondent is mentally ill and is dangerous to himself, as defined in
8 G.S. 122C-3(11)a., or others, as defined in G.S. 122C-3(11)b., or is
9 mentally retarded and, because of an accompanying behavior disorder,
10 is dangerous to others, as defined in G.S. 122C-3(11)b., it may order
11 inpatient commitment at a 24-hour facility described in G.S. 122C-252
12 for a period not in excess of 90 days. However, an individual who is
13 mentally retarded and, because of an accompanying behavior disorder,
14 is dangerous to others, as defined in G.S. 122C-3(11)b., may not be
15 committed to a State, area or private facility for the mentally retarded.
16 An individual who is mentally ill and dangerous to himself, as defined
17 in G.S. 122C-3(11)a., or others, as defined in G.S. 122C-3(11)b., may
18 also be committed to a combination of inpatient and outpatient
19 commitment at both a 24-hour facility and an outpatient treatment
20 physician or center for a period not in excess of 90 days. If the
21 commitment proceedings were initiated as the result of the
22 respondent's being charged with a violent crime, including a crime
23 involving an assault with a deadly weapon, and the respondent was
24 found ~~not guilty by reason of insanity or~~ incapable of proceeding, the
25 commitment order shall so show. If the court orders inpatient
26 commitment for a respondent who is under an outpatient commitment
27 order, the outpatient commitment is terminated; and the clerk of the
28 superior court of the county where the district court hearing is held
29 shall send a notice of the inpatient commitment to the clerk of superior
30 court where the outpatient commitment was being supervised.

31 (3) If the court does not find that the respondent meets either of the
32 commitment criteria set out in subdivisions (1) and (2) of this
33 subsection, the respondent shall be discharged, and the facility in
34 which he was last a client so notified.

35 (4) Before ordering any outpatient commitment, the court shall make
36 findings of fact as to the availability of outpatient treatment. The court
37 shall also show on the order the outpatient treatment physician or
38 center who is to be responsible for the management and supervision of
39 the respondent's outpatient commitment. When an outpatient
40 commitment order is issued for a respondent held in a 24-hour facility,
41 the court may order the respondent held at the facility for no more than
42 72 hours in order for the facility to notify the designated outpatient
43 treatment physician or center of the treatment needs of the respondent.
44 The clerk of court in the county where the facility is located shall send

1 a copy of the outpatient commitment order to the designated outpatient
2 treatment physician or center. If the outpatient commitment will be
3 supervised in a county other than the county where the commitment
4 originated, the court shall order venue for further court proceedings to
5 be transferred to the county where the outpatient commitment will be
6 supervised. Upon an order changing venue, the clerk of superior court
7 in the county where the commitment originated shall transfer the file to
8 the clerk of superior court in the county where the outpatient
9 commitment is to be supervised."

10 Sec. 13. G.S. 122C-273(a)(4) reads as rewritten:

11 "(4) At any time that the outpatient treatment physician or center finds that
12 the respondent no longer meets the criteria set out in G.S. 122C-
13 263(d)(1), the physician or center shall so notify the court and the case
14 shall be terminated; provided, however, if the respondent was initially
15 committed as a result of conduct resulting in his being charged with a
16 violent crime, including a crime involving an assault with a deadly
17 weapon, and the respondent was found ~~not guilty by reason of insanity or~~
18 incapable of proceeding, the designated outpatient treatment physician
19 or center shall notify the clerk that discharge is recommended. The
20 clerk shall calendar a supplemental hearing as provided in G.S. 122C-
21 274 to determine whether the respondent meets the criteria for
22 outpatient commitment."

23 Sec. 14. G.S. 122C-275(a) reads as rewritten:

24 "(a) Fifteen days before the end of the initial or subsequent periods of outpatient
25 commitment if the outpatient treatment physician or center determines that the
26 respondent continues to meet the criteria specified in G.S. 122C-263(d)(1), he shall so
27 notify the clerk of superior court of the county where the outpatient commitment is
28 supervised. If the respondent no longer meets the criteria, the physician shall so notify
29 the clerk who shall dismiss the case; provided, however, if the respondent was initially
30 committed as a result of conduct resulting in his being charged with a violent crime,
31 including a crime involving an assault with a deadly weapon, and the respondent was
32 found ~~not guilty by reason of insanity or~~ incapable of proceeding, the physician or center
33 shall notify the clerk that discharge is recommended. The clerk, at least 10 days before
34 the end of the commitment period, on order of the district court, shall calendar the
35 rehearing."

36 Sec. 15. This act is effective upon ratification and applies to all hearings and
37 rehearings on discharge or conditional release occurring or or after the date of
38 ratification for persons who were found not guilty by reason of insanity of commission
39 of a crime.