

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 386

Short Title: M.H. Pretrial Procedures/AB.

(Public)

Sponsors: Representative Lemmond.

Referred to: Judiciary II.

March 8, 1995

A BILL TO BE ENTITLED

1 AN ACT TO REQUIRE THAT A LOCAL FORENSIC EXAMINATION BE MADE
2 OF A DEFENDANT WHOSE CAPACITY TO PROCEED TO TRIAL IS
3 QUESTIONED BEFORE A STATE EVALUATION MAY BE ORDERED AND TO
4 MODIFY THE AUTHORITY OF THE DIVISION OF MENTAL HEALTH,
5 DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES TO
6 RESTRICT THE RIGHTS OF CLIENTS AT THE PRETRIAL EVALUATION
7 CENTER AT DOROTHEA DIX.
8

9 The General Assembly of North Carolina enacts:

10 Section 1. G.S. 15A-1002(b) reads as rewritten:

11 "(b) When the capacity of the defendant to proceed is questioned, the court shall
12 hold a hearing to determine the defendant's capacity to proceed. If an examination is
13 ordered pursuant to subdivisions (1) or (2) below, the hearing shall be held after the
14 examination. Reasonable notice shall be given to the defendant and prosecutor, and the
15 State and the defendant may introduce evidence. The court:

16 (1) May appoint one or more impartial medical experts, including forensic
17 evaluators approved under rules of the Commission for Mental Health,
18 Developmental Disabilities, and Substance Abuse Services, to examine
19 the defendant and return a written report describing the present state of
20 the defendant's mental health; reports so prepared are admissible at the

1 hearing and the court may call any expert so appointed to testify at the
2 hearing; any expert so appointed may be called to testify at the hearing
3 by the court at the request of either party; ~~or and~~

- 4 (2) ~~In the case of a defendant charged with a misdemeanor only after the~~
5 ~~examination pursuant to subsection (b)(1) of this section or at any time~~
6 ~~in the case of a defendant charged with a felony, If an examination~~
7 ~~pursuant to subsection (b)(1) of this section has been completed, may~~
8 order the defendant to a State facility for the mentally ill for observation
9 and treatment for the period, not to exceed 60 days, necessary to
10 determine the defendant's capacity to proceed; the sheriff shall return
11 the defendant to the county when notified that the evaluation has been
12 completed; the director of the facility shall direct his report on
13 defendant's condition to the defense attorney and to the clerk of superior
14 court, who shall bring it to the attention of the court; the report is
15 admissible at the hearing; ~~hearing; if the report indicates that the~~
16 ~~defendant has capacity to proceed, the clerk shall direct the sheriff to~~
17 ~~return him to the county."~~

18 Sec. 2. G.S. 122C-62 reads as rewritten:

19 **"§ 122C-62. Additional rights in 24-hour facilities.**

20 (a) In addition to the rights enumerated in G.S. 122C-51 through G.S. 122C-61,
21 each adult client who is receiving treatment or habilitation in a 24-hour facility keeps the
22 right to:

- 23 (1) Send and receive sealed mail and have access to writing material,
24 postage, and staff assistance when necessary;
25 (2) Contact and consult with, at his own expense and at no cost to the
26 facility, legal counsel, private physicians, and private mental health,
27 developmental disabilities, or substance abuse professionals of his
28 choice; and
29 (3) Contact and consult with a client advocate if there is a client advocate.

30 The rights specified in this subsection may not be restricted by the facility and each adult
31 client may exercise these rights at all reasonable times.

32 (b) Except as provided in subsections (e) and (h) of this section, each adult client
33 who is receiving treatment or habilitation in a 24-hour facility at all times keeps the right
34 to:

- 35 (1) Make and receive confidential telephone calls. All long distance calls
36 shall be paid for by the client at the time of making the call or made
37 collect to the receiving party;
38 (2) Receive visitors between the hours of 8:00 a.m. and 9:00 p.m. for a
39 period of at least six hours daily, two hours of which shall be after 6:00
40 p.m.; however visiting shall not take precedence over therapies;
41 (3) Communicate and meet under appropriate supervision with individuals
42 of his own choice upon the consent of the individuals;
43 (4) Make visits outside the custody of the facility unless:

- 1 a. Commitment proceedings were initiated as the result of the
2 client's being charged with a violent crime, including a crime
3 involving an assault with a deadly weapon, and the respondent
4 was found not guilty by reason of insanity or incapable of
5 proceeding;
- 6 b. The client was voluntarily admitted or committed to the facility
7 while under order of commitment to a correctional facility of the
8 Department of Correction; or
- 9 c. The client is being held to determine capacity to proceed
10 pursuant to G.S. 15A-1002;

11 A court order may expressly authorize visits otherwise prohibited by the
12 existence of the conditions prescribed by this subdivision;

- 13 (5) Be out of doors daily and have access to facilities and equipment for
14 physical exercise several times a week;
- 15 (6) Except as prohibited by law, keep and use personal clothing and
16 ~~possessions; possessions, unless the client is being held to determine~~
17 capacity to proceed pursuant to G.S. 15A-1002;
- 18 (7) Participate in religious worship;
- 19 (8) Keep and spend a reasonable sum of his own money;
- 20 (9) Retain a driver's license, unless otherwise prohibited by Chapter 20 of
21 the General Statutes; and
- 22 (10) Have access to individual storage space for his private use.

23 (c) In addition to the rights enumerated in G.S. 122C-51 through G.S. 122C-57
24 and G.S. 122C-59 through G.S. 122C-61, each minor client who is receiving treatment or
25 habilitation in a 24-hour facility has the right to have access to proper adult supervision
26 and guidance. In recognition of the minor's status as a developing individual, the minor
27 shall be provided opportunities to enable him to mature physically, emotionally,
28 intellectually, socially, and vocationally. In view of the physical, emotional, and
29 intellectual immaturity of the minor, the 24-hour facility shall provide appropriate
30 structure, supervision and control consistent with the rights given to the minor pursuant to
31 this Article. The facility shall also, where practical, make reasonable efforts to ensure that
32 each minor client receives treatment apart and separate from adult clients unless the
33 treatment needs of the minor client dictate otherwise.

34 Each minor client who is receiving treatment or habilitation from a 24-hour facility
35 has the right to:

- 36 (1) Communicate and consult with his parents or guardian or the agency or
37 individual having legal custody of him;
- 38 (2) Contact and consult with, at his own expense or that of his legally
39 responsible person and at no cost to the facility, legal counsel, private
40 physicians, private mental health, developmental disabilities, or
41 substance abuse professionals, of his or his legally responsible person's
42 choice; and
- 43 (3) Contact and consult with a client advocate, if there is a client advocate.

1 The rights specified in this subsection may not be restricted by the facility and each
2 minor client may exercise these rights at all reasonable times.

3 (d) Except as provided in subsections (e) and (h) of this section, each minor client
4 who is receiving treatment or habilitation in a 24-hour facility has the right to:

5 (1) Make and receive telephone calls. All long distance calls shall be paid
6 for by the client at the time of making the call or made collect to the
7 receiving party;

8 (2) Send and receive mail and have access to writing materials, postage, and
9 staff assistance when necessary;

10 (3) Under appropriate supervision, receive visitors between the hours of
11 8:00 a.m. and 9:00 p.m. for a period of at least six hours daily, two
12 hours of which shall be after 6:00 p.m.; however visiting shall not take
13 precedence over school or therapies;

14 (4) Receive special education and vocational training in accordance with
15 federal and State law;

16 (5) Be out of doors daily and participate in play, recreation, and physical
17 exercise on a regular basis in accordance with his needs;

18 (6) Except as prohibited by law, keep and use personal clothing and
19 possessions under appropriate ~~supervision~~; supervision, unless the client
20 is being held to determine capacity to proceed pursuant to G.S. 15A-
21 1002;

22 (7) Participate in religious worship;

23 (8) Have access to individual storage space for the safekeeping of personal
24 belongings;

25 (9) Have access to and spend a reasonable sum of his own money; and

26 (10) Retain a driver's license, unless otherwise prohibited by Chapter 20 of
27 the General Statutes.

28 (e) No right enumerated in subsections (b) or (d) of this section may be limited or
29 restricted except by the qualified professional responsible for the formulation of the
30 client's treatment or habilitation plan. A written statement shall be placed in the client's
31 record that indicates the detailed reason for the restriction. The restriction shall be
32 reasonable and related to the client's treatment or habilitation needs. A restriction is
33 effective for a period not to exceed 30 days. An evaluation of each restriction shall be
34 conducted by the qualified professional at least every seven days, at which time the
35 restriction may be removed. Each evaluation of a restriction shall be documented in the
36 client's record. Restrictions on rights may be renewed only by a written statement entered
37 by the qualified professional in the client's record that states the reason for the renewal of
38 the restriction. In the case of an adult client who has not been adjudicated incompetent, in
39 each instance of an initial restriction or renewal of a restriction of rights, an individual
40 designated by the client shall, upon the consent of the client, be notified of the restriction
41 and of the reason for it. In the case of a minor client or an incompetent adult client, the
42 legally responsible person shall be notified of each instance of an initial restriction or
43 renewal of a restriction of rights and of the reason for it. Notification of the designated

1 individual or legally responsible person shall be documented in writing in the client's
2 record.

3 (f) The Commission may adopt rules to implement subsection (e) of this section.

4 (g) With regard to clients being held to determine capacity to proceed pursuant to
5 G.S. 15A-1002 or clients in a facility for substance abuse, and notwithstanding the prior
6 provisions of this section, the Commission may adopt rules restricting the rights set forth
7 under ~~(b)(2) and (d)(3)~~ (b)(2), (b)(3), and (d)(3) of this section if restrictions are necessary
8 and reasonable in order to protect the health, safety, and welfare of the client involved or
9 other clients.

10 (h) The rights stated in subdivisions (b)(2), (b)(4), (b)(5), (b)(10), (d)(3), (d)(5)
11 and (d)(8) may be modified in a general hospital by that hospital to be the same as for
12 other patients in that hospital; provided that any restriction of a specific client's rights
13 shall be done in accordance with the provisions of subsection (e) of this section."

14 Sec. 3. This act becomes effective July 1, 1995. Section 1 applies to cases
15 pending on or after that date, and Section 2 applies to client rights on or after that date.