

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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HOUSE BILL 243  
Committee Substitute Favorable 5/11/09

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

Sponsors:

Referred to:

February 23, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE AUTHORITY OF NONLAW ENFORCEMENT PERSONNEL DESIGNATED BY A CITY OR COUNTY TO PROVIDE TRANSPORTATION OR CUSTODY UNDER INVOLUNTARY COMMITMENT PROCEEDINGS; 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-251 reads as rewritten:

"§ 122C-251. ~~Transportation.~~ Transportation and custody.

...

(e) In providing the transportation and custody required by this section, the law-enforcement officer may use reasonable force to restrain the respondent if it appears necessary to protect himself, the respondent, or others. No law-enforcement officer may be held criminally or civilly liable for assault, false imprisonment, or other torts or crimes on account of reasonable measures taken under the authority of this Article.

...

(g) The governing body of a city or county may adopt a plan for the transportation and custody of respondents in involuntary commitment proceedings in this Article. Law-enforcement personnel, volunteers, or other public or private agency personnel may be designated to provide all or parts of the transportation and custody required by involuntary commitment proceedings. Persons so designated shall be trained and the plan shall assure adequate safety and protections for both the public and the respondent. Law enforcement, other affected agencies, and the area authority shall participate in the planning. If any person other than a law-enforcement agency is designated by a city or county, the person so designated shall provide the transportation and custody and follow the procedures in this Article. References in this Article to a law-enforcement officer apply to this person.

(h) The cost and expenses of transporting a respondent to or from a 24-hour facility is the responsibility of the county of residence of the respondent. The State (when providing transportation under G.S. 122C-408(b)), a city, or a county is entitled to recover the reasonable cost of transportation from the county of residence of the respondent. The county of residence of the respondent shall reimburse the State, another county, or a city the reasonable transportation costs incurred as authorized by this subsection. The county of residence of the respondent is entitled to recover the reasonable cost of transportation it has paid to the State, a city, or a county. Provided that the county of residence provides the respondent or other



1 individual liable for the respondent's support a reasonable notice and opportunity to object to  
2 the reimbursement, the county of residence of the respondent may recover that cost from:

- 3 (1) The respondent, if the respondent is not indigent;
- 4 (2) Any person or entity that is legally liable for the resident's support and  
5 maintenance provided there is sufficient property to pay the cost;
- 6 (3) Any person or entity that is contractually responsible for the cost; or
- 7 (4) Any person or entity that otherwise is liable under federal, State, or local law  
8 for the cost.

9 (i) Responsibility for transportation and custody under this section shall not be  
10 construed to mean that law enforcement or other designated personnel providing all or parts of  
11 the transportation and custody under this section are responsible or liable for the cost of  
12 examination or treatment provided to a respondent. Nothing in this subsection shall be  
13 construed to change the existing liability for the cost of examination and treatment."

14 **SECTION 2.** G.S. 122C-261(d) reads as rewritten:

15 "(d) If the affiant is a physician or eligible psychologist, the affiant may execute the  
16 affidavit before any official authorized to administer oaths. This affiant is not required to  
17 appear before the clerk or magistrate for this purpose. This affiant shall file the affidavit with  
18 the clerk or magistrate by delivering to the clerk or magistrate the original affidavit or a copy in  
19 paper form that is printed through the facsimile transmission of the affidavit. If the affidavit is  
20 filed through facsimile transmission, the affiant shall mail the original affidavit no later than  
21 five days after the facsimile transmission of the affidavit to the clerk or magistrate to be filed  
22 by the clerk or magistrate with the facsimile copy of the affidavit. This affiant's examination  
23 shall comply with the requirements of the initial examination as provided in G.S. 122C-263(c).  
24 If the physician or eligible psychologist recommends outpatient commitment and the clerk or  
25 magistrate finds probable cause to believe that the respondent meets the criteria for outpatient  
26 commitment, the clerk or magistrate shall issue an order that a hearing before a district court  
27 judge be held to determine whether the respondent will be involuntarily committed. The  
28 physician or eligible psychologist shall provide the respondent with written notice of any  
29 scheduled appointment and the name, address, and telephone number of the proposed  
30 outpatient treatment physician or center. If the physician or eligible psychologist recommends  
31 inpatient commitment and the clerk or magistrate finds probable cause to believe that the  
32 respondent meets the criteria for inpatient commitment, the clerk or magistrate shall issue an  
33 order for transportation to or custody at a 24-hour facility described in  
34 G.S. ~~122C-252~~122C-252, provided that if a 24-hour facility is not immediately available or  
35 appropriate to the respondent's medical condition, the respondent may be temporarily detained  
36 under appropriate supervision and, upon further examination, released in accordance with  
37 G.S. 122C-263(d)(2). ~~However, if~~ If the clerk or magistrate finds probable cause to believe that  
38 the respondent, in addition to being mentally ill, is also mentally retarded, the clerk or  
39 magistrate shall contact the area authority before issuing the order and the area authority shall  
40 designate the facility to which the respondent is to be transported. If a physician or eligible  
41 psychologist executes an affidavit for inpatient commitment of a respondent, a second  
42 physician shall be required to perform the examination required by G.S. 122C-266."

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

44 "**§ 122C-263. Duties of law-enforcement officer; first examination by physician or eligible**  
45 **psychologist.**

46 ...

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

- 49 (1) If the physician or eligible psychologist finds that:
  - 50 a. The respondent is mentally ill;

- 1           b.     The respondent is capable of surviving safely in the community with  
2           available supervision from family, friends, or others;  
3           c.     Based on the respondent's psychiatric history, the respondent is in  
4           need of treatment in order to prevent further disability or  
5           deterioration that would predictably result in dangerousness as  
6           defined by G.S. 122C-3(11); and  
7           d.     The respondent's current mental status or the nature of the  
8           respondent's illness limits or negates the respondent's ability to make  
9           an informed decision to seek voluntarily or comply with  
10          recommended treatment.

11          The physician or eligible psychologist shall so show on the examination  
12          report and shall recommend outpatient commitment. In addition the  
13          examining physician or eligible psychologist shall show the name, address,  
14          and telephone number of the proposed outpatient treatment physician or  
15          center. The person designated in the order to provide transportation shall  
16          return the respondent to the respondent's regular residence or, with the  
17          respondent's consent, to the home of a consenting individual located in the  
18          originating county, and the respondent shall be released from custody.

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

1 issuance of the custody order, a physician or psychologist shall report this  
2 fact to the clerk of superior court, and the proceedings shall be terminated.

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

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

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

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

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

33 **SECTION 4.** Section 1(5) of S.L. 2003-178, as amended by Section 10.27 of S.L.  
34 2006-66, and as further amended by Section 1.1(a)(5) of S.L. 2007-504, reads as rewritten:

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

36 **SECTION 5.** Section 4 of this act becomes effective July 1, 2009. The remainder  
37 of this act becomes effective October 1, 2009.