

NORTH CAROLINA GENERAL ASSEMBLY
1973 SESSION

CHAPTER 658
HOUSE BILL 545

AN ACT TO AMEND THE STATE LAW WITH RESPECT TO DISCHARGE FROM
STATE MENTAL HOSPITALS OF PERSONS ACQUITTED OF CRIME BY REASON
OF INSANITY.

Whereas, the Senate in Senate Resolution 871 of 1971 has directed the Legislative Research Commission to make a complete in-depth study of the Department of Mental Health and related programs and to make recommendations to the 1973 General Assembly; and

Whereas, the Legislative Research Commission has found a need for comprehensive revision of the State laws relating to incompetency, admission and commitment to mental hospitals, discharge from mental hospitals, and mental illness as a defense to criminal charges; and

Whereas, the Commission has recommended the creation of a Mental Health Code Commission, which is the subject of a separate bill, for the purpose of drafting a comprehensive revision of such State laws and submitting it to the 1975 General Assembly; and

Whereas, the Commission has also recommended the immediate amendment by the 1973 General Assembly of G.S. 122-86, which has been invalidated by the 1972 decision of the North Carolina Supreme Court in the case of *In re Tew*; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Purpose of act. The purpose of this act is to revise G.S. 122-86 in accord with the decision of the Supreme Court of North Carolina in the 1972 case of *In re Tew*.

Sec. 2. Amendments. G.S. 122-86 is hereby amended to read as follows:

"§ 122-86. **Persons acquitted of crime on account of mental illness; how discharged from hospital.** — Any person acquitted of a crime on the ground of mental illness, and committed to the hospital designated in G.S. 122-83, shall have the right to apply to any judge having jurisdiction for a writ of habeas corpus. At the habeas corpus hearing the burden will be on the petitioner to prove that he has recovered from his mental illness and that he does not appear to require further hospitalization and treatment to avoid danger himself or others. The judge will consider all the evidence offered by the petitioner and the State and make his finding therefrom. The judge may release the petitioner unconditionally or conditionally, or he may remand the petitioner to the custody of the hospital."

Sec. 3. Effective date. This act shall be effective upon its ratification.

In the General Assembly read three times and ratified, this the 22nd day of May, 1973.