NORTH CAROLINA GENERAL ASSEMBLY
1973 SESSION

CHAPTER 726
HOUSE BILL 1081

AN ACT TO AMEND CHAPTER 122 OF THE GENERAL STATUTES RELATING TO COMMITMENT OF PERSONS TO TREATMENT FACILITIES FOR THE MENTALLY ILL.

The General Assembly of North Carolina enacts:

Section 1. Article 5 of Chapter 122 of the General Statutes is hereby amended to read as follows:

"Article 5.
"Involuntary Commitment.

"**§ 122-60. Declaration of policy. —** It is the policy of the State to insure that no person shall be committed to a treatment facility unless he is determined to be dangerous to himself or others or gravely disabled. It is further the policy of the State to insure that the commitment of any person with mental illness or inebriety to a treatment facility will be implemented under conditions that protect the dignity and rights of the person; to establish procedures which promptly respond to the needs of the person; to encourage the utilization of voluntary admissions to programs and treatment facilities; and to assure that any person admitted to inpatient treatment facilities is discharged as soon as a less restrictive mode of treatment is appropriate.

"**§ 122-61. Definitions. —** (a) The words 'law enforcement officer', as used in this Article, shall mean sheriffs, deputy sheriffs, constables, police officers, and highway patrolmen.

(b) The words 'gravely disabled', as used in this Article, shall mean unable because of mental illness or inebriety to provide for basic personal needs for food, clothing, or shelter.

(c) The word 'custody', as used in this Article, shall mean such physical restraint as is necessary to bring a person before a magistrate for a hearing, or to a qualified physician for examination, or to a treatment facility for evaluation after the hearing, including the detaining of a person in his own home, in a private hospital or in a treatment facility, if necessary to locate a magistrate or qualified physician, for a period not to exceed 24 hours, provided that in no event may custody include detention in a nonmedical facility used for the detention of individuals charged with or convicted of penal offenses.

(d) The word 'person', as used in this Article, shall mean the person taken into custody or admitted to a treatment facility.

(e) The words 'qualified physician', as used in this Article, shall have the same meaning as defined in G.S. 122-36(f).

(f) The words 'treatment facility', as used in this Article, shall mean any hospital or institution operated by the State of North Carolina and designated for the admission of any person in need of care and treatment due to mental illness or mental retardation, any center or facility operated by the State of North Carolina for the care, treatment or rehabilitation of inebriates, and any community mental health clinic or center administered by the State of North Carolina, and, provided that approval of admission or commitment is obtained from the Director of the Inpatient Service, the Psychiatric Training and Research Center at the South Wing of the North Carolina Memorial Hospital at Chapel Hill for admission or commitment to that facility.

(g) The words 'mental illness', as used in this Article, shall mean 'mental illness' as defined in G.S. 122-36(d).

(h) The word 'inebriety', as used in this Article, shall mean 'inebriety' as defined in G.S. 122-36(c).

"**§ 122-62. Involuntary commitment —** A person may be involuntarily committed only in the following ways:

(1) Judicial hospitalization. Any person who, by reason of the commission of overt acts, is determined by a law enforcement officer to be violent and of imminent danger to himself or others, or to be gravely disabled, may be taken into custody by a law enforcement officer but only for the purpose of obtaining a personal medical examination and evaluation of the person by a qualified physician. The law enforcement officer may not retain the person in custody after such personal examination and evaluation without the authorization required by this section, nor may the law enforcement officer retain the person in custody for more than 24 hours prior to obtaining the personal medical examination and evaluation. Any person who, by reason of the commission of overt acts, is determined by a qualified physician to be violent and of imminent danger to himself or others, or to be gravely disabled, may be taken into custody by a law enforcement officer as authorized by this section. Authorization may be given by any qualified physician in the form of a written statement that he has made a personal examination of the person within 24 hours of the date of his statement and that it is his professional opinion, based upon such examination, that the person is violent and of imminent danger to himself or others, or is gravely disabled. The written statement of the qualified physician must specify the overt acts upon which his professional opinion is based. The qualified physician's written statement, when in the possession of the law enforcement officer for a period not to exceed 72 hours after it is made, shall constitute authority, without any court order, for such law enforcement officer to bring the person and the written authorization of the qualified physician immediately before a magistrate.

(2) Emergency hospitalization. If a law enforcement officer has reasonable grounds to believe, by reason of the commission of overt acts, that any person is violent and of imminent danger to himself or others and that the delay of obtaining a medical examination would likely endanger life or property, such law enforcement officer may take the person into custody and bring the person immediately before a magistrate.

"**§ 122-63. Duties of magistrate. —** Judicial hospitalization.

(1) When the person is brought before the magistrate pursuant to G.S. 122-62(1), it shall be the duty of the magistrate to determine if there are reasonable grounds to believe, by reason of the commission of overt acts, that the person is violent and of imminent danger to himself or others, or is gravely disabled. In making such determination, the magistrate must first take and consider oral testimony and may also consider any written authorization of a qualified physician.

After hearing the evidence, the magistrate shall issue a written order either releasing the person from custody or directing the law enforcement officer to transport the person to a treatment facility where the person shall remain pending the hearing unless released according to G.S. 122-64.

If the magistrate orders the law enforcement officer to transport the person to a treatment facility, the written order shall contain findings of fact

which specify the overt acts that give reasonable grounds to believe that the person is violent and of imminent danger to himself or others, or is gravely disabled.

(2) Emergency hospitalization. When the person is brought before the magistrate pursuant to G.S. 122-62(2), the magistrate shall order the release of the person from custody if he determines that there are not reasonable grounds to believe, by reason of the commission of overt acts, that the person is violent and of imminent danger to himself or others or is gravely disabled, or if he determines that there are not reasonable grounds to believe that the delay of obtaining a medical examination prior to taking the person into custody would likely endanger life or property.

In making his determination, the magistrate must take and consider oral testimony.

If the magistrate does not order the release of the person from custody, he shall issue an order directing a law enforcement officer to transport the person to a treatment facility for the purpose of obtaining a medical examination as provided in G.S. 122-64.

Upon receiving the written statement of the qualified physician who has examined the patient pursuant to G.S. 122-64, the magistrate shall determine if there are reasonable grounds to believe, by reason of the commission of overt acts, that the person is violent and of imminent danger to himself or others, or is gravely disabled. In making such determination, the magistrate shall consider oral testimony which he has previously heard and may also consider the written statement of the qualified physician and additional oral testimony.

If the magistrate determines that there are not reasonable grounds to believe, by reason of the commission of overt acts, that the person is violent and of imminent danger to himself or others, or is gravely disabled, then he shall order the release of the person from custody.

If the magistrate determines that there are reasonable grounds to believe, by reason of the commission of overt acts, that the person is violent and of imminent danger to himself or others, or is gravely disabled, then the magistrate shall order that the person be retained in custody pending the district court hearing provided for in G.S. 122-65; provided that if the written statement of the qualified physician who has examined the person pursuant to G.S. 122-64 concludes that the person is not violent and of imminent danger to himself or others and is not gravely disabled, then the magistrate shall order the person released from custody pending the district court hearing provided for in G.S. 122-65.

If the magistrate orders that the person be retained in custody or released pending the district court hearing, the written order shall contain findings of fact which specify the overt acts that give reasonable grounds to believe that the person is violent and of imminent danger to himself or others, or is gravely disabled.

If no written statement containing the determination of a qualified physician pursuant to G.S. 122-64 is furnished to the magistrate within 48 hours of the arrival of the person at the treatment facility, the magistrate shall order the immediate release of the person from custody.

"**§ 122-64. Examination by qualified physician at treatment facility. —** (1) Within 24 hours of arrival of a person at a treatment facility pursuant to G.S. 122-63, he shall receive a personal medical examination and evaluation by a qualified physician, who shall determine on the basis

of the examination whether the person is violent and of imminent danger to himself or others, or is gravely disabled. The determination shall be in the form of a written statement. If the qualified physician determines that the person is violent and of imminent danger to himself or others, he shall record reasons for his determination in his written statement.

(2) (a) If a person is brought to the treatment facility for judicial hospitalization pursuant to G.S. 122-63(1),

(i) he may be released from the treatment facility pending the time of the district court hearing provided for in G.S. 122-65 if the qualified physician who examines him determines that he is not violent and of imminent danger to himself or others and is not gravely disabled;

(ii) he shall remain at the treatment facility pending the district court hearing provided for in G.S. 122-65 if the qualified physician who examined him determines that he is violent and of imminent danger to himself or others or is gravely disabled.

(b) If a person is brought to the treatment facility for emergency hospitalization pursuant to G.S. 122-63(2), the written statement of the qualified physician shall be furnished to the magistrate within 24 hours of the medical examination.

"**§ 122-65. District Court hearing. —** (1) Within five days, or for good cause shown for delay, within 10 days of the date that the person is taken into custody, a District Court Judge shall hear the case to determine, by reason of the commission of overt acts, whether the person is violent and of imminent danger to himself or others, or is gravely disabled. If the District Court Judge makes such determination, he shall order the person to be committed to a treatment facility, or, in the alternative, he may order outpatient treatment of the person at a treatment facility or at a private facility which provides mental health care and treatment; provided, that treatment provided by a private facility shall be paid for by the person.

Calendaring of the hearing shall be in accordance with G.S. 7A-146. The Clerk of Court shall give notice to the person taken into custody and his attorney of the date of the hearing, no later than 48 hours preceding the date of hearing, unless such notice is waived by the attorney of the person.

(2) If the hearing has not been held and a written order of involuntary commitment signed by the District Court Judge within 10 days of the date the person is taken into custody, the person shall be immediately released from custody and from the treatment facility.

(3) The court shall inquire whether the person is indigent as defined in 7A-450 of the General Statutes. If the court finds the person to be indigent, counsel shall be appointed by the court pursuant to Chapter 7A. The judge at the time of or prior to the hearing shall inquire whether the person is represented by counsel and, if not, shall appoint counsel. Such fees and other necessary expenses of representation shall be borne by the State, provided that such fees and other necessary expenses of representation paid by the State shall be reimbursed to the State by the person represented unless the person is determined to be indigent under Chapter 7A.

(4) The person shall be present at the hearing, and such right shall be waived only at the written recommendation of the attorney of the person, with the concurrence of the court.

(5) The person has a right to be represented by counsel at the hearing, but this right may be waived with the consent of the Court.

(6) A transcript of the hearing shall be made, and the cost of the transcript added to the court costs. If the person is eligible for court appointed counsel under

Chapter 7A, he shall be provided with a transcript, and such cost shall be borne by the State.

(7) The order of the District Court Judge may be appealed to the Superior Court for a hearing de novo. The person at such hearing shall retain the right to a jury determination of the issues in accordance with the North Carolina Rules of Civil Procedure.

"**§ 122-66. Length of involuntary commitment, rehearing. —** (1) Length of involuntary commitment. If the District Court Judge determines at the hearing provided for in G.S. 122-65, by reason of the commission of overt acts, that the person is violent and of imminent danger to himself or to others, or is gravely disabled, the District Court Judge shall issue an order that such person be admitted for care and treatment at the appropriate treatment facility for a period not to exceed 90 days.

(2) Rehearing. If the superintendent or director of the treatment facility determines that the person will be in need of care and treatment beyond the initial period of commitment, he shall make written request for rehearing to the Chief District Judge at least 30 days prior to the end of the commitment period. At the time he makes this request, the superintendent or director shall give a copy of such request to the person, or to his guardian if the person has been adjudicated incompetent under Chapter 35 and has not been restored to legal capacity, and to the person's attorney. At least 15 days before the rehearing, the Clerk of Court shall notify the person, or his guardian if the person has been adjudicated incompetent according to Chapter 35 and has not been restored to legal capacity, and his attorney of the date set for rehearing. The rehearing shall be conducted according to the procedure set forth in G.S. 122-65(3), (4), (5), (6), and (7). At the rehearing, the person shall be accorded all rights to which he was entitled at the initial commitment hearing before the District Court Judge. Each subsequent commitment ordered after rehearing by the District Court Judge shall not exceed 120 days and shall not be extended except by the procedures set forth in this section.

"**§ 122-67. Discharge. —** The superintendent or the director of the treatment facility may discharge an involuntarily committed person at any time before the expiration of the commitment period.

When an involuntarily committed person is discharged from the treatment facility, transportation must be provided for him to the county of his residence by the sheriff of such county. The cost of such return shall be borne by the county of residence.

An involuntarily committed person who is discharged may, however, elect to use alternate means of transportation, including bus or private automobile. Should such an election be made by the person, he may be discharged provided that he bears the cost of such transportation.

Within 10 days following the discharge of an involuntarily committed person, the superintendent or director of the treatment facility shall prepare and send to the District Court Judge upon whose order commitment was authorized a certificate of discharge which shall be filed in the court record. In such certificate, the superintendent or director may find that the patient is no longer in need of care and treatment in a treatment facility, in which case such certificate shall operate to remove all disabilities arising from the commitment."

Sec. 2. G.S. 122-45, G.S. 122-58, G.S. 122-59. G.S. 122-60, G.S. 122-61, G.S. 122-62, G.S. 122-63, G.S. 122-63.1. G.S. 122-64, G.S. 122-65, G.S. 122-65.3, G.S. 122-65.4, G.S. 122-66.1, G.S. 122-67, G.S. 122-67.1. G.S. 122-68. G.S. 122-68.1, G.S. 122-82.1, G.S. 122-44 and all other laws and clauses of laws in conflict with this act are hereby repealed.

Sec. 3. G.S. 122-65.8 is hereby amended by deleting subsection (1) and renumbering subsection (2) as (1), renumbering subsection (3) as (2), renumbering subsection

(4) as (3), renumbering subsection (5) as (4) and by deleting the final sentence in subsection (5).

Sec. 4. G.S. 7A-451(a)(6) is hereby amended by deleting the semicolon and by inserting in lieu thereof the following: "and a proceeding for involuntary commitment to a treatment facility under Article 5 of Chapter 122 of the General Statutes."

Sec. 5. G.S. 7A-246 is hereby amended by inserting after the words "special proceedings" the words "except proceedings for involuntary commitment to treatment facilities (Chapter 122, Article 5, of the General Statutes)".

Sec. 6. This act shall become effective September 1, 1973.

In the General Assembly read three times and ratified, this the 23rd day of May, 1973.