

NORTH CAROLINA GENERAL ASSEMBLY
1977 SESSION

CHAPTER 1134
HOUSE BILL 802

AN ACT REPEALING THE CRIMINAL OFFENSE OF PUBLIC DRUNKENNESS AND
GRANTING AUTHORITY TO ASSIST PERSONS WHO BECOME INTOXICATED IN
PUBLIC.

The General Assembly of North Carolina enacts:

Section 1. Chapter 14 of the General Statutes is amended by adding the following new Article:

"ARTICLE 59.

"Public Intoxication.

"§ 14-440. **Definitions.** — As used in this Article:

- (1) 'alcoholism' is the state of a person who habitually lacks self-control as to the use of intoxicating liquor, or uses intoxicating liquor to the extent that his health is substantially impaired or endangered or his social or economic function is substantially disrupted; and
- (2) 'intoxicated' is the condition of a person whose mental or physical functioning is presently substantially impaired as a result of the use of alcohol; and
- (3) a 'public place' is a place which is open to the public, whether it is publicly or privately owned.

"§ 14-441. **Intoxicated and disruptive in public.** — (a) It shall be unlawful for any person in a public place to be intoxicated and disruptive in any of the following ways:

- (1) blocking or otherwise interfering with traffic on a highway or public vehicular area, or
- (2) blocking or lying across or otherwise preventing or interfering with access to or passage across a sidewalk or entrance to a building, or
- (3) grabbing, shoving, pushing or fighting others or challenging others to fight, or
- (4) cursing or shouting at or otherwise rudely insulting others, or
- (5) begging for money or other property.

(b) Any person who violates this section shall be guilty of a misdemeanor punishable by a fine of not more than fifty dollars (\$50.00) or imprisonment for not more than 30 days. Notwithstanding the provisions of G.S. 7A-273(1), a magistrate is not empowered to accept a guilty plea and enter judgment for this offense.

"§ 14-442. **Defense of alcoholism.** — (a) It is a defense to a charge of being intoxicated and disruptive in a public place that the defendant suffers from alcoholism.

(b) The presiding judge at the trial of a defendant charged with being intoxicated and disruptive in public shall consider the defense of alcoholism even though the defendant does not raise the defense, and may request additional information on whether the defendant is suffering from alcoholism.

"§ 14-443. **Disposition of defendant acquitted because of alcoholism.** — If a defendant is found not guilty of being intoxicated and disruptive in a public place because he suffers from alcoholism, the court in which he was tried may retain jurisdiction over him for up to 15 days

to determine whether he is an alcoholic in need of care as defined by G.S. 122-58.19 or G.S. 122-58.20. The trial judge may make that determination at the time the defendant is found not guilty or he may require the defendant to return to court for the determination at some later time within the 15-day period.

"§ 14-444. No prosecution for public intoxication. — (a) No person may be prosecuted solely for being intoxicated in a public place. A person who is intoxicated in a public place and is not disruptive may be assisted as provided in G.S. 122-65.11.

(b) If, after arresting a person for being intoxicated and disruptive in a public place, the law enforcement officer making the arrest determines that the person would benefit from the care of a shelter or health care facility as provided in G.S. 122-65.11, and that he would not likely be disruptive in such a facility, the officer may transport and release the person to the appropriate facility and issue him a citation for the offense of being intoxicated and disruptive in a public place."

Sec. 2. Chapter 122 of the General Statutes is amended by adding the following new Article:

"ARTICLE 7B.

"Public Intoxication.

"§ 122-65.10. Definitions. — As used in this Article:

- (1) 'intoxicated' is the condition of a person whose mental or physical functioning is presently substantially impaired as a result of the use of alcohol; and
- (2) 'officer' is a law enforcement officer with the power of arrest, or an officer employed by a city or county under G.S. 122-65.12; and
- (3) a 'public place' is a place which is open to the public, whether it is publicly or privately owned.

"§ 122-65.11. Assistance to person who is intoxicated in public. — (a) An officer may assist a person found intoxicated in a public place by taking any of the following actions:

- (1) the officer may direct or transport the intoxicated person home;
- (2) the officer may direct or transport the intoxicated person to the residence of another person willing to accept him;
- (3) if the intoxicated person is apparently in need of and unable to provide for himself food, clothing or shelter, but is not apparently in need of immediate medical care, the officer may direct or transport him to an appropriate public or private shelter facility approved for this purpose by the Department of Human Resources; or
- (4) if the intoxicated person is apparently in need of but unable to provide for himself immediate medical care, the officer may direct or transport him to a community mental health center, hospital, or physician's office; or the officer may direct or transport the person to any other appropriate health care facility approved for this purpose by the Department of Human Resources.

(b) In providing the assistance authorized by subsection (a), the officer may use reasonable force to restrain the intoxicated person if it appears necessary to protect himself, the intoxicated person or others. No officer may be held criminally or civilly liable for assault, false imprisonment, or other torts or crimes on account of reasonable measures taken under authority of this Article.

(c) If the officer takes the action described in either subdivision (a)(3) or (a)(4) above, the facility to which the intoxicated person is taken may detain him only until he becomes sober, or a maximum of 24 hours, unless the officer or someone at the facility has obtained an order from a clerk or magistrate under subsection (d). The person may stay a longer period if he wishes to do so and the facility is able to accommodate him.

(d) Upon finding that it is probable that a person assisted under subdivision (a)(3) or (a)(4) is an alcoholic in need of care as defined by G.S. 122-58.19 or G.S. 122-58.20, a clerk or magistrate may order that person detained until he can appear before a district court judge for a hearing to determine if he is an alcoholic in need of care. The person may be detained no more than 96 hours for this purpose. The clerk or magistrate may direct that the person be kept at the facility to which he was taken under subdivision (a)(3) or (a)(4), or at any other facility approved for this purpose by the Department of Human Resources. If the district court judge is unable to make a determination whether the person is an alcoholic in need of care at the time the alleged alcoholic is initially brought before him, he may order the person to return to court at any time within the next 15 days to complete the determination.

"§ 122-65.12. Cities and counties may employ officers to assist intoxicated persons. — A city or county may employ officers to assist persons who are intoxicated in public. Officers employed for this purpose shall be trained to give assistance to those who are intoxicated in public, including the administration of first aid. An officer employed by a city or county to assist intoxicated persons shall have the powers and duties set out in G.S. 122-65.11 within the same territory in which criminal laws may be enforced by law enforcement officers of that city or county."

Sec. 3. Chapter 122 is further amended by adding the following new section.

"§ 122-65.13. Use of jail for care for intoxicated person. — In addition to the actions authorized by G.S. 122-65.11(a), an officer may assist a person found intoxicated in a public place by directing or transporting that person to a city or county jail. That action may be taken only if the intoxicated person is apparently in need of and unable to provide for himself food, clothing or shelter, but is not apparently in need of immediate medical care, and no other facility is readily available to receive him. The officer and employees of the jail shall be exempt from liability as provided in G.S. 122-65.11(b). The intoxicated person may be detained at the jail only until he becomes sober, or a maximum of 24 hours, and may be released at any time to a relative or other person willing to be responsible for his care."

Sec. 4. Chapter 122 is further amended by adding the following new sections at the end of Article 5A:

"§ 122-58.19. Short-term treatment for alcoholic in need of care. — (a) A district court judge may take any one or more of the actions specified in subsection (e) if he finds that a person is an alcoholic and is in need of care. A person is an alcoholic if he habitually lacks self-control as to the use of intoxicating liquor, or uses intoxicating liquor to the extent that his health is substantially impaired or endangered or his social or economic function is substantially disrupted. An alcoholic is in need of care if his alcoholism is presently causing him to lose control over his own actions to the extent that he regularly has to depend on others to provide food, clothing, shelter, medical or other essential care for him.

(b) The alleged alcoholic may be brought before the district court judge under G.S. 14-443 after being found not guilty by reason of alcoholism of the offense of being intoxicated and disruptive in a public place, or under G.S. 122-65.11 after being assisted while intoxicated in public.

(c) If he believes it will be of value in making his determination, the district court judge may direct an alcoholism court counselor, if available, to conduct a prehearing review of the alleged alcoholic's drinking history and make recommendations on proper disposition for the person if he is found to be an alcoholic in need of care.

(d) If the alleged alcoholic is an indigent within the meaning of G.S. 7A-450, and does not waive counsel, the clerk of court or the district court judge shall appoint counsel to represent him. At the hearing in district court the alleged alcoholic shall be entitled to confront and cross-examine witnesses. The hearing may be held in chambers. If the person is found to be an alcoholic in need of care and ordered to participate in a treatment program as provided in

subdivision (e)(2), the judge shall record the facts which support his findings and the alcoholic shall have the right of appeal from that order as set out in G.S. 122-58.9.

(e) If the district court judge finds the person to be an alcoholic in need of care, he may take any one or more of the following actions:

- (1) direct the alcoholic in cooperation with any member of his family or other responsible person to make and follow plans for his treatment in an alcoholism program operated or approved by the court;
- (2) order the alcoholic to participate for up to 30 days in a particular outpatient or inpatient alcoholism program operated or approved by the Department of Human Resources, or commit the person to the custody of the Division of Mental Health Services for up to 30 days for assignment to an appropriate alcoholism program;
- (3) refer the alcoholic to an alcoholism program or to a particular physician or other professional qualified to assist alcoholics;
- (4) direct any alcoholism agency operated or approved by the Department of Human Resources to work with the alcoholic to develop and carry out a program for his treatment or care.

(f) As part of the action taken under subsection (e) the judge may direct the alcoholic or any public official concerned to make periodic reports for up to 30 days relating to the alcoholic's participation and progress in the activity to which he has been assigned.

"§ 122-58.20. Long-term residential care for alcoholic who has not progressed in treatment. — (a) A district court judge may order a person committed for up to 180 days to a residential facility operated or approved for that purpose by the Department of Human Resources, if the judge determines by clear and convincing evidence that:

- (1) the person is an alcoholic who is in need of care as defined by G.S. 122-58.19; and
- (2) he has been given recent opportunities to participate in alcoholism treatment programs; and
- (3) he has willfully refused to participate or cooperate in such programs, or has failed to show significant and sustained progress toward overcoming his alcoholism.

(b) The alleged alcoholic may be brought before the district court judge under G.S. 14-443 after being found not guilty by reason of alcoholism of the offense of being intoxicated and disruptive in a public place, or under G.S. 122-65.11 after being assisted while intoxicated in public. The provisions of subsections (c) and (d) of G.S. 122-58.19 shall also be applicable to proceedings under this section. Notice of the district court hearing shall be given to the alleged alcoholic and his counsel by the clerk of court at least 48 hours in advance of the scheduled appearance unless counsel waived notice for the alleged alcoholic.

(c) A person committed to a residential facility for up to 180 days under subsection (a) may be released at any time prior to the end of that period when the director of the facility determines that the person is no longer in need of the care of that facility.

(d) If at the end of the period of commitment imposed under subsection (a), the director of the residential facility is of the opinion that the alcoholic is in need of further care at the facility, he may request a hearing for an additional commitment under the procedures of G.S. 122-58.11. The proceeding shall be the same as for involuntary commitment under that section except that the issue to be determined by the district court judge is whether the person should be committed under subsection (a)."

Sec. 5. G.S. 15A-534(c), as it appears in 1975 Replacement Volume 1C of the General Statutes, is amended by inserting the following language between the word and punctuation "condition;" and the word "the" in the fifth line of that subsection: "whether the

defendant is intoxicated to such a degree that he would be endangered by being released without supervision;"

Sec. 6. G.S. 14-334, G.S. 14-335, G.S. 14-335.1, G.S. 122-65.6, G.S. 122-65.7, G.S. 122-65.8, and G.S. 122-65.9 are repealed.

Sec. 7. All laws, clauses of laws, and local ordinances in conflict with this act are hereby repealed.

Sec. 8. This act shall become effective on October 1, 1978.

In the General Assembly read three times and ratified, this the 12th day of June, 197[8].