

GENERAL ASSEMBLY OF NORTH CAROLINA
1983 SESSION

CHAPTER 380
SENATE BILL 75

AN ACT REGARDING INVOLUNTARY COMMITMENT OF PERSONS FOUND
INCAPABLE OF PROCEEDING OR NOT GUILTY BY REASON OF
INSANITY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-1003(a) is rewritten to read as follows:

"When a defendant is found to be incapable of proceeding, the presiding judge, upon such additional hearing, if any, as he determines to be necessary, shall determine whether there are reasonable grounds to believe the defendant meets the criteria for involuntary commitment under Article 5A of Chapter 122 of the General Statutes. If the presiding judge finds reasonable grounds to believe that the defendant meets the criteria, he shall make findings of fact and issue a custody order in the same manner, upon the same grounds and with the same effect as an order issued by a clerk or magistrate pursuant to G.S. 122-58.3 or G.S. 122-58.18. Proceedings thereafter are in accordance with Article 5A of Chapter 122 of the General Statutes. If the defendant was charged with a violent crime, including a crime involving assault with a deadly weapon, the judge's custody order shall require a law enforcement officer to take the defendant directly to a community or regional mental health facility pursuant to G.S. 122-58.4(b); and the order must indicate that the defendant was charged with a violent crime and that he was found incapable of proceeding."

Sec. 2. G.S. 15A-1004(c) is amended by adding the following at the end to read: "If the defendant was charged with a violent crime, including a crime involving assault with a deadly weapon, and that charge has not been dismissed, the order must require that if the defendant is to be released from the custody of the hospital or other institution, he is to be released only to the custody of a specified law enforcement agency. If the original or supplemental orders do not specify to whom the respondent shall be released, the hospital or other institution may release the defendant to whomever it thinks appropriate."

Sec. 3. G.S. 15A-1321 is amended to read as follows:

"When a defendant charged with a crime is found not guilty by reason of insanity by jury verdict or upon motion pursuant to G.S. 15A-959(c), the presiding judge upon such additional hearing, if any, as he determines to be necessary, shall determine whether there are reasonable grounds to believe the defendant meets the criteria for involuntary commitment under Article 5A of Chapter 122 of the General Statutes. If the presiding judge finds reasonable grounds to believe that the defendant meets the criteria, he shall make findings of fact and issue a custody order in the same manner, upon the same

grounds, and with the same effect, as an order issued by a clerk or magistrate pursuant to G.S. 122-58.3 or G.S. 122-58.18. Proceedings thereafter are in accordance with Article 5A of Chapter 122 of the General Statutes. However, if the defendant was charged with a violent crime, including a crime involving assault with a deadly weapon, the judge's custody order shall require a law enforcement officer to take the defendant directly to a community or regional mental health facility pursuant to G.S. 122-58.4(b); and the order must indicate that the defendant was charged with a violent crime and that he was found not guilty by reason of insanity."

Sec. 4. G.S. 122-58.4(b) is rewritten to read:

"(b) The examination set forth in subsection (a) is not required if:

- (1) the affiant who obtained the custody order is a qualified physician; or
- (2) the custody order states that the respondent was charged with a violent crime, including a crime involving assault with a deadly weapon, and he was found not guilty by reason of insanity or incapable of proceeding; or
- (3) the respondent is in custody under the special emergency procedure described in G.S. 122-58.18.

In any of these cases, the law enforcement officer shall take the respondent directly to a mental health facility described in subsection (c)."

Sec. 5. G.S. 122-58.6 is amended by adding a new subsection between subsections (a) and (b) to read:

"(a1) If the custody order states that the respondent was charged with a violent crime, including a crime involving assault with a deadly weapon, and that he was found not guilty by reason of insanity or incapable of proceeding, the physician shall examine him as set forth in subsection (a). However, the physician may not release him from the facility until ordered to do so following the district court hearing."

Sec. 6. G.S. 122-58.7 is amended by adding a new subsection between subsection (b) and (c) to read:

"(b1) If the respondent's custody order indicates that he was charged with a violent crime, including a crime involving an assault with a deadly weapon, and that he was found not guilty by reason of insanity or incapable of proceeding, the clerk shall give notice of the time and place of the hearing as provided in G.S. 122-58.20(c). The district attorney in the county in which the respondent was found not guilty by reason of insanity or incapable of proceeding may represent the State's interest at the hearing."

Sec. 7. G.S. 122-58.7A(c) is rewritten to read:

"(c) Upon motion of any interested party, the venue of an initial hearing described in G.S. 122-58.7(b1) or a rehearing required by G.S. 122-58.13(b) shall be moved to the county in which the respondent was found not guilty by reason of insanity or incapable of proceeding when the convenience of witnesses and the ends of justice would be promoted by the change."

Sec. 8. G.S. 122-58.8(b) is amended by adding a new sentence between the second and third sentences to read: "If G.S. 15A-1004(c) applies, the order of commitment shall also specify to whom the respondent is to be released."

Sec. 9. G.S. 122-58.20 is amended by adding a new subsection to read:

"(c) In cases described in G.S. 122-58.7(b1), the clerk shall notify the chief district judge and the district attorney in the county in which the defendant was found not guilty by reason of insanity or incapable of proceeding. The notice shall be given in the same manner as the notice required by subsection (a). The judge or the district attorney may file a written waiver of his right to notice under this subsection with the clerk of court."

Sec. 10. G.S. 122-58.4(a) as set out in the 1981 Replacement Volume to Volume 3B of the General Statutes is amended on line 1 by adding between the word "magistrate" and the punctuation "," the following words: "or a custody order issued by the court pursuant to G.S. 15A-1003 or G.S. 15A-1321".

Sec. 11. This act shall become effective October 1, 1983.

In the General Assembly read three times and ratified, this the 24th day of May, 1983.