

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 992

Short Title: Mental Illness Definitions Clarified.

(Public)

Sponsors: Representatives Gardner; and Bowman.

Referred to: Human Resources.

April 3, 1989

A BILL TO BE ENTITLED

1 AN ACT TO CLARIFY THE MENTAL HEALTH LAW'S REFERENCES TO
2 PERSONS DANGEROUS TO THEMSELVES AND OTHERS AND TO ADD A
3 DEFINITION OF SEVERE AND PERSISTENT MENTAL ILLNESS.
4

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 122C-161(a) reads as rewritten:

7 "(a) Anyone who has knowledge of an individual who is: (i) mentally ill and
8 either dangerous to ~~himself or others~~ himself, as defined in G.S. 122C-3(11)a., or others,
9 as defined in G.S. 122C-3(11)b., or in need of treatment in order to prevent further
10 disability or deterioration that would predictably result in dangerousness, or (ii)
11 mentally retarded and, because of an accompanying behavior disorder, is dangerous to
12 others, as defined in G.S. 122C-3(11)b., may appear before a clerk or assistant or deputy
13 clerk of superior court or a magistrate and execute an affidavit to this effect, and petition
14 the clerk or magistrate for issuance of an order to take the respondent into custody for
15 examination by a physician or eligible psychologist. The affidavit shall include the
16 facts on which the affiant's opinion is based. Jurisdiction under this subsection is in the
17 clerk or magistrate in the county where the respondent resides or is found."

18 Sec. 2. G.S. 122C-261(b) reads as rewritten:

19 "(b) If the clerk or magistrate finds reasonable grounds to believe that the facts
20 alleged in the affidavit are true and that the respondent is probably (i) mentally ill and
21 either dangerous to ~~himself or others~~ himself, as defined in G.S. 122C-3(11)a., or others,
22 as defined in G.S. 122C-3(11)b., or in need of treatment in order to prevent further
23 disability or deterioration that would predictably result in dangerousness, or (ii)
24 mentally retarded and, because of an accompanying behavior disorder, is dangerous to

1 others, as defined in G.S. 122C-3(11)b., he shall issue an order to a law-enforcement
2 officer or any other person authorized under G.S. 122C-251 to take the respondent into
3 custody for examination by a physician or eligible psychologist."

4 Sec. 3. G.S. 122C-263(c) reads as rewritten:

5 "(c) The physician or eligible psychologist described in subsection (a) of this
6 section shall examine the respondent as soon as possible, and in any event within 24
7 hours, after the respondent is presented for examination. The examination shall include
8 but is not limited to an assessment of the respondent's:

- 9 (1) Current and previous mental illness or mental retardation including, if
10 available, previous treatment history;
- 11 (2) Dangerousness to ~~himself or others as defined in G.S. 122C-3(11)~~himself,
12 as defined in G.S. 122C-3(11)a. or others, as defined in G.S. 122C-
13 3(11)b.;
- 14 (3) Ability to survive safely without inpatient commitment, including the
15 availability of supervision from family, friends or others; and
- 16 (4) Capacity to make an informed decision concerning treatment."

17 Sec. 4. G.S. 122C-163(d) reads as rewritten:

18 "(d) After the conclusion of the examination the physician or eligible psychologist
19 shall make the following determinations:

- 20 (1) If the physician or eligible psychologist finds that:
 - 21 a. The respondent is mentally ill;
 - 22 b. The respondent is capable of surviving safely in the community
23 with available supervision from family, friends, or others;
 - 24 c. Based on the respondent's treatment history, the respondent is in
25 need of treatment in order to prevent further disability or
26 deterioration which would predictably result in dangerousness
27 as defined by G.S. 122C-3(11); and
 - 28 d. His current mental status or the nature of his illness limits or
29 negates his ability to make an informed decision to seek
30 voluntarily or comply with recommended treatment;

31 The physician or eligible psychologist shall so show on [the] his
32 examination report and shall recommend outpatient commitment. In
33 addition the examining physician or eligible psychologist shall show
34 the name, address, and telephone number of the proposed outpatient
35 treatment physician or center. The person designated in the order to
36 provide transportation shall return the respondent to his regular
37 residence or to the home of a consenting individual, and he shall be
38 released from custody.

- 39 (2) If the physician or eligible psychologist finds that the respondent is
40 mentally ill and is dangerous to ~~himself or others,~~himself as defined in
41 G.S. 122C-3(11)a., or others, as defined in G.S. 122C-3(11)b., or is
42 mentally retarded, and because of an accompanying behavior disorder,
43 is dangerous to others, as defined in G.S. 122C-3(11)b. he shall
44 recommend inpatient commitment, and he shall so show on [the] his

1 examination report. The law-enforcement officer or other designated
2 person shall take the respondent to a 24-hour facility described in G.S.
3 122C-252 pending a district court hearing. If there is no area 24-hour
4 facility and if the respondent is indigent and unable to pay for his care
5 at a private 24-hour facility, the law-enforcement officer or other
6 designated person shall take the respondent to a State facility for the
7 mentally ill designated by the Commission in accordance with G.S.
8 143B-157(a)(1)a for custody, observation, and treatment and
9 immediately notify the clerk of superior court of his actions.

- 10 (3) If the physician or eligible psychologist finds that neither condition
11 described in subdivisions (1) or (2) of this subsection exists, the
12 respondent shall be released and the proceedings terminated."

13 Sec. 5. G.S. 122C-165(e) reads as rewritten:

14 "(e) If a respondent becomes dangerous to ~~himself or others~~ himself, as defined in
15 G.S. 122C-3(11)a., or others, as defined in G.S. 122C-3(11)b., pending a district court
16 hearing on outpatient commitment, new proceedings for involuntary inpatient
17 commitment may be initiated."

18 Sec. 6. G.S. 122C-266(a) reads as rewritten:

19 "(a) Except as provided in subsections (b) and (e), within 24 hours of arrival at a
20 24-hour facility described in G.S. 122C-252, the respondent shall be examined by a
21 physician. The examination shall include but is not limited to the assessment specified
22 in G.S. 122C- 263(c).

- 23 (1) If the physician finds that the respondent is mentally ill and is
24 dangerous to ~~himself or others~~ himself, as defined by G.S. 122C-
25 3(11)a., or others, as defined by G.S. 122C-3(11)b., or is mentally
26 retarded and, because of an accompanying behavior disorder, is
27 dangerous to others, as defined in G.S. 122C-3(11)b., he shall hold the
28 respondent at the facility pending the district court hearing.

- 29 (2) If the physician finds that the respondent meets the criteria for
30 outpatient commitment under G.S. 122C-263(d)(1), he shall show his
31 findings on the physician's examination report, release the respondent
32 pending the district court hearing, and notify the clerk of superior court
33 of the county where the petition was initiated of his findings. In
34 addition, the examining physician shall show on the examination
35 report the name, address, and telephone number of the proposed
36 outpatient treatment physician or center. He shall give the respondent a
37 written notice listing the name, address, and telephone number of the
38 proposed outpatient treatment physician or center and directing the
39 respondent to appear at that address at a specified date and time. The
40 examining physician before the appointment shall notify by telephone
41 and shall send a copy of the notice and his examination report to the
42 proposed outpatient treatment physician or center.

- 43 (3) If the physician finds that the respondent does not meet the criteria for
44 commitment under either G.S. 122C-263(d)(1) or G.S. 122C-

1 263(d)(2), he shall release the respondent and the proceedings shall be
2 terminated.

3 (4) If the respondent is released under subdivisions (2) or (3) of this
4 subsection, the law-enforcement officer or other person designated to
5 provide transportation shall return the respondent to the originating
6 county."

7 Sec. 7. G.S. 122C-268(j) reads as rewritten:

8 "(j) To support an inpatient commitment order, the court shall find by clear,
9 cogent, and convincing evidence that the respondent is mentally ill and dangerous to
10 ~~himself or others~~ himself, as defined in G.S. 122C-3(11)a., or others, as defined in G.S.
11 122C-3(11)b., or is mentally retarded and, because of an accompanying behavior
12 disorder, is dangerous to ~~others~~ others, as defined in G.S. 122C-3(11)b. The court shall
13 record the facts that support its findings."

14 Sec. 8. G.S. 122C-271(b) reads as rewritten:

15 "(b) If the respondent has been held in a 24-hour facility pending the district court
16 hearing, the court may make one of the following dispositions:

17 (1) If the court finds by clear, cogent, and convincing evidence that the
18 respondent is mentally ill; that he is capable of surviving safely in the
19 community with available supervision from family, friends, or others;
20 that based on respondent's treatment history, the respondent is in need
21 of treatment in order to prevent further disability or deterioration that
22 would predictably result in dangerousness as defined by G.S. 122C-
23 3(11); and that the respondent's current mental status or the nature of
24 his illness limits or negates his ability to make an informed decision
25 voluntarily to seek or comply with recommended treatment, it may
26 order outpatient commitment for a period not in excess of 90 days. If
27 the commitment proceedings were initiated as the result of the
28 respondent's being charged with a violent crime, including a crime
29 involving an assault with a deadly weapon, and the respondent was
30 found not guilty by reason of insanity or incapable of proceeding, the
31 commitment order shall so show.

32 (2) If the court finds by clear, cogent, and convincing evidence that the
33 respondent is mentally ill and is dangerous to ~~himself or others~~ himself,
34 as defined in G.S. 122C-3(11)a., or others, as defined in G.S. 122C-
35 3(11)b., or is mentally retarded and, because of an accompanying
36 behavior disorder, is dangerous to ~~others~~ others, as defined in G.S. 122C-
37 3(11)b., it may order inpatient commitment at a 24-hour facility
38 described in G.S. 122C-252 for a period not in excess of 90 days.
39 However, an individual who is mentally retarded and, because of an
40 accompanying behavior disorder, is dangerous to ~~others~~ others, as
41 defined in G.S. 122C-3(11)b., may not be committed to a State, area or
42 private facility for the mentally retarded. An individual who is
43 mentally ill and dangerous to ~~himself or others~~ himself, as defined in
44 G.S. 122C-3(11)a., or others, as defined in G.S. 122C-3(11)b., may

1 also be committed to a combination of inpatient and outpatient
2 commitment at both a 24-hour facility and an outpatient treatment
3 physician or center for a period not in excess of 90 days. If the
4 commitment proceedings were initiated as the result of the
5 respondent's being charged with a violent crime, including a crime
6 involving an assault with a deadly weapon, and the respondent was
7 found not guilty by reason of insanity or incapable of proceeding, the
8 commitment order shall so show. If the court orders inpatient
9 commitment for a respondent who is under an outpatient commitment
10 order, the outpatient commitment is terminated; and the clerk of the
11 superior court of the county where the district court hearing is held
12 shall send a notice of the inpatient commitment to the clerk of superior
13 court where the outpatient commitment was being supervised.

14 (3) If the court does not find that the respondent meets either of the
15 commitment criteria set out in subdivisions (1) and (2) of this
16 subsection, the respondent shall be discharged, and the facility in
17 which he was last a client so notified.

18 (4) Before ordering any outpatient commitment, the court shall make
19 findings of fact as to the availability of outpatient treatment. The court
20 shall also show on the order the outpatient treatment physician or
21 center who is to be responsible for the management and supervision of
22 the respondent's outpatient commitment. When an outpatient
23 commitment order is issued for a respondent held in a 24-hour facility,
24 the court may order the respondent held at the facility for no more than
25 72 hours in order for the facility to notify the designated outpatient
26 treatment physician or center of the treatment needs of the respondent.
27 The clerk of court in the county where the facility is located shall send
28 a copy of the outpatient commitment order to the designated outpatient
29 treatment physician or center. If the outpatient commitment will be
30 supervised in a county other than the county where the commitment
31 originated, the court shall order venue for further court proceedings to
32 be transferred to the county where the outpatient commitment will be
33 supervised. Upon an order changing venue, the clerk of superior court
34 in the county where the commitment originated shall transfer the file to
35 the clerk of superior court in the county where the outpatient
36 commitment is to be supervised."

37 Sec. 9. G.S. 122C-273(a) reads as rewritten:

38 "(a) Unless prohibited by Chapter 90 of the General Statutes, if the commitment
39 order directs outpatient treatment, the outpatient treatment physician may prescribe or
40 administer, or the center may administer, to the respondent reasonable and appropriate
41 medication and treatment that are consistent with accepted medical standards.

42 (1) If the respondent fails to comply or clearly refuses to comply with all
43 or part of the prescribed treatment, the physician, the physician's
44 designee, or the center shall make all reasonable effort to solicit the

1 respondent's compliance. These efforts shall be documented and
2 reported to the court with a request for a supplemental hearing.

3 (2) If the respondent fails to comply, but does not clearly refuse to
4 comply, with all or part of the prescribed treatment after reasonable
5 effort to solicit the respondent's compliance, the physician, the
6 physician's designee, or the center may request the court to order the
7 respondent taken into custody for the purpose of examination. Upon
8 receipt of this request, the clerk shall issue an order to a law-
9 enforcement officer to take the respondent into custody and to take
10 him immediately to the designated outpatient treatment physician or
11 center for examination. The law-enforcement officer shall turn the
12 respondent over to the custody of the physician or center who shall
13 conduct the examination and then release the respondent. The law-
14 enforcement officer may wait during the examination and return the
15 respondent to his home after the examination. An examination
16 conducted under this subsection in which a physician or eligible
17 psychologist determines that the respondent meets the criteria for
18 inpatient commitment may be substituted for the first examination
19 required by G.S. 122C- 263 if the clerk or magistrate issues a custody
20 order within six hours after the examination was performed.

21 (3) In no case may the respondent be physically forced to take medication
22 or ~~forceably~~ forcibly detained for treatment unless he poses an
23 immediate danger to himself or others. In such cases inpatient
24 commitment proceedings shall be initiated.

25 (4) At any time that the outpatient treatment physician or center finds that
26 the respondent no longer meets the criteria set out in G.S. 122C-
27 263(d)(1), the physician or center shall so notify the court and the case
28 shall be terminated; provided, however, if the respondent was initially
29 committed as a result of conduct resulting in his being charged with a
30 violent crime, including a crime involving an assault with a deadly
31 weapon, and the respondent was found not guilty by reason of insanity
32 or incapable of proceeding, the designated outpatient treatment
33 physician or center shall notify the clerk that discharge is
34 recommended. The clerk shall calendar a supplemental hearing as
35 provided in G.S. 122C-274 to determine whether the respondent meets
36 the criteria for outpatient commitment.

37 (5) Any individual who has knowledge that a respondent on outpatient
38 commitment has become dangerous to ~~himself or others as defined by~~
39 ~~G.S. 122C-3(11)~~ himself, as defined by G.S. 122C-3(11)a., and others,
40 as defined in G.S. 122C-3(11)b., may initiate a new petition for
41 inpatient commitment as provided in this Part. If the respondent is
42 committed as an inpatient, the outpatient commitment shall be
43 terminated and notice sent by the clerk of court in the county where the

1 respondent is committed as an inpatient to the clerk of court of the
2 county where the outpatient commitment is being supervised."

3 Sec. 10. G.S. 122C-274(c) reads as rewritten:

4 "(c) In supplemental hearings for alleged noncompliance, the court shall
5 determine whether the respondent has failed to comply and, if so, the causes for
6 noncompliance. If the court determines that the respondent has failed or refused to
7 comply it may:

8 (1) Upon finding probable cause to believe that the respondent is mentally
9 ill and dangerous to ~~himself or others~~, himself, as defined in G.S. 122C-
10 3(11)a., or others, as defined in G.S. 122C-3(11)b., order an
11 examination by the same or different physician or eligible psychologist
12 as provided in G.S. 122C-263(c) in order to determine the necessity for
13 continued outpatient or inpatient commitment;

14 (2) Reissue or change the outpatient commitment order in accordance with
15 G.S. 122C-271; or

16 (3) Discharge the respondent from the order and dismiss the case."

17 Sec. 11. G.S. 122C-3 is amended by inserting a new subdivision to read:

18 "(33a) 'Severe and persistent mental illness' means a mental disorder suffered by
19 persons of 18 years of age or older that leads these persons to exhibit emotional or
20 behavioral functioning that is so impaired as to interfere substantially with their capacity
21 to remain in the community without supportive treatment or services of a long term or
22 indefinite duration. This disorder is a severe and persistent mental disability, resulting
23 in a long-term limitation of functional capacities for the primary activities of daily
24 living, such as interpersonal relations, homemaking, self-care, employment, and
25 recreation."

26 Sec. 12. This act is effective upon ratification.