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Short Title: Mental Illness Definitions Clarified.

(Public)

Sponsors: Representatives Gardner; and Bowman.

Referred to: Human Resources.

April 3, 1989

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (3) If the physician finds that the respondent does not meet the criteria for
2 commitment under either G.S. 122C-263(d)(1) or G.S. 122C-
3 263(d)(2), he shall release the respondent and the proceedings shall be
4 terminated.

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

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

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

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

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

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

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

1 mentally ill and dangerous to ~~himself or others~~ himself, as defined in
2 G.S. 122C-3(11)a., or others, as defined in G.S. 122C-3(11)b., may
3 also be committed to a combination of inpatient and outpatient
4 commitment at both a 24-hour facility and an outpatient treatment
5 physician or center for a period not in excess of 90 days. If the
6 commitment proceedings were initiated as the result of the
7 respondent's being charged with a violent crime, including a crime
8 involving an assault with a deadly weapon, and the respondent was
9 found not guilty by reason of insanity or incapable of proceeding, the
10 commitment order shall so show. If the court orders inpatient
11 commitment for a respondent who is under an outpatient commitment
12 order, the outpatient commitment is terminated; and the clerk of the
13 superior court of the county where the district court hearing is held
14 shall send a notice of the inpatient commitment to the clerk of superior
15 court where the outpatient commitment was being supervised.

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

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

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

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

- 1 (1) If the respondent fails to comply or clearly refuses to comply with all
2 or part of the prescribed treatment, the physician, the physician's
3 designee, or the center shall make all reasonable effort to solicit the
4 respondent's compliance. These efforts shall be documented and
5 reported to the court with a request for a supplemental hearing.
- 6 (2) If the respondent fails to comply, but does not clearly refuse to
7 comply, with all or part of the prescribed treatment after reasonable
8 effort to solicit the respondent's compliance, the physician, the
9 physician's designee, or the center may request the court to order the
10 respondent taken into custody for the purpose of examination. Upon
11 receipt of this request, the clerk shall issue an order to a law-
12 enforcement officer to take the respondent into custody and to take
13 him immediately to the designated outpatient treatment physician or
14 center for examination. The law-enforcement officer shall turn the
15 respondent over to the custody of the physician or center who shall
16 conduct the examination and then release the respondent. The law-
17 enforcement officer may wait during the examination and return the
18 respondent to his home after the examination. An examination
19 conducted under this subsection in which a physician or eligible
20 psychologist determines that the respondent meets the criteria for
21 inpatient commitment may be substituted for the first examination
22 required by G.S. 122C- 263 if the clerk or magistrate issues a custody
23 order within six hours after the examination was performed.
- 24 (3) In no case may the respondent be physically forced to take medication
25 or ~~forceably~~forcibly detained for treatment unless he poses an
26 immediate danger to himself or others. In such cases inpatient
27 commitment proceedings shall be initiated.
- 28 (4) At any time that the outpatient treatment physician or center finds that
29 the respondent no longer meets the criteria set out in G.S. 122C-
30 263(d)(1), the physician or center shall so notify the court and the case
31 shall be terminated; provided, however, if the respondent was initially
32 committed as a result of conduct resulting in his being charged with a
33 violent crime, including a crime involving an assault with a deadly
34 weapon, and the respondent was found not guilty by reason of insanity
35 or incapable of proceeding, the designated outpatient treatment
36 physician or center shall notify the clerk that discharge is
37 recommended. The clerk shall calendar a supplemental hearing as
38 provided in G.S. 122C-274 to determine whether the respondent meets
39 the criteria for outpatient commitment.
- 40 (5) Any individual who has knowledge that a respondent on outpatient
41 commitment has become dangerous to ~~himself or others as defined by~~
42 G.S. 122C-3(11)-himself, as defined by G.S. 122C-3(11)a., and others,
43 as defined in G.S. 122C-3(11)b., may initiate a new petition for
44 inpatient commitment as provided in this Part. If the respondent is

1 committed as an inpatient, the outpatient commitment shall be
2 terminated and notice sent by the clerk of court in the county where the
3 respondent is committed as an inpatient to the clerk of court of the
4 county where the outpatient commitment is being supervised."

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

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

- 10 (1) Upon finding probable cause to believe that the respondent is mentally
11 ill and dangerous to ~~himself or others~~, himself, as defined in G.S. 122C-
12 3(11)a., or others, as defined in G.S. 122C-3(11)b., order an
13 examination by the same or different physician or eligible psychologist
14 as provided in G.S. 122C-263(c) in order to determine the necessity for
15 continued outpatient or inpatient commitment;
- 16 (2) Reissue or change the outpatient commitment order in accordance with
17 G.S. 122C-271; or
- 18 (3) Discharge the respondent from the order and dismiss the case."

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

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

28 Sec. 12. G.S. 122C-3(11)3b is amended by adding a new sentence at the end
29 thereof to read as follows:

30 "Any individual who has committed an unlawful homicide, and has been found not
31 guilty by reason of insanity, or who has committed an unlawful homicide, and has been
32 found incompetent to proceed, shall be presumed dangerous to others for a period of
33 five years."

34 Sec. 13. This act is effective upon ratification.