

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 386  
Committee Substitute Favorable 4/19/95

Short Title: M.H. Pretrial Procedures/AB.

(Public)

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Sponsors:

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Referred to:

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March 8, 1995

A BILL TO BE ENTITLED

1 AN ACT TO GIVE PRIORITY TO A LOCAL FORENSIC EXAMINATION OF A  
2 DEFENDANT WHOSE CAPACITY TO PROCEED TO TRIAL IS QUESTIONED  
3 BEFORE A STATE EVALUATION IS ORDERED AND TO MODIFY THE  
4 AUTHORITY OF THE DIVISION OF MENTAL HEALTH, DEVELOPMENTAL  
5 DISABILITIES, AND SUBSTANCE ABUSE SERVICES TO RESTRICT THE  
6 RIGHTS OF CLIENTS AT THE PRETRIAL EVALUATION CENTER AT  
7 DOROTHEA DIX.  
8

9 The General Assembly of North Carolina enacts:

10 Section 1. G.S. 15A-1002(b) reads as rewritten:

11 "(b) When the capacity of the defendant to proceed is questioned, the court shall  
12 hold a hearing to determine the defendant's capacity to proceed. If an examination is  
13 ordered pursuant to subdivisions (1) or (2) below, the hearing shall be held after the  
14 examination. Reasonable notice shall be given to the defendant and prosecutor, and the  
15 State and the defendant may introduce evidence. The court:

- 16 (1) May appoint one or more impartial medical experts, including forensic  
17 evaluators approved under rules of the Commission for Mental Health,  
18 Developmental Disabilities, and Substance Abuse Services, to examine  
19 the defendant and return a written report describing the present state of

1 the defendant's mental health; reports so prepared are admissible at the  
2 hearing and the court may call any expert so appointed to testify at the  
3 hearing; any expert so appointed may be called to testify at the hearing  
4 by the court at the request of either party; or

- 5 (2) In the case of a defendant charged with a misdemeanor only after the  
6 examination pursuant to subsection (b)(1) of this section or at any time  
7 in the case of a defendant charged with a felony, may order the  
8 defendant to a State facility for the mentally ill for observation and  
9 treatment for the period, not to exceed 60 days, necessary to determine  
10 the defendant's capacity to proceed; in the case of a defendant charged  
11 with a felony, if a defendant is ordered to a State facility without first  
12 having an examination pursuant to subsection (b)(1) of this section, the  
13 judge shall make a finding that an examination pursuant to this  
14 subsection would be more appropriate to determine the defendant's  
15 capacity; the sheriff shall return the defendant to the county when  
16 notified that the evaluation has been completed; the director of the  
17 facility shall direct his report on defendant's condition to the defense  
18 attorney and to the clerk of superior court, who shall bring it to the  
19 attention of the court; the report is admissible at the hearing. ~~hearing; if~~  
20 ~~the report indicates that the defendant has capacity to proceed, the clerk shall~~  
21 ~~direct the sheriff to return him to the county."~~

22 Sec. 2. G.S. 122C-62 reads as rewritten:

23 **"§ 122C-62. Additional rights in 24-hour facilities.**

24 (a) In addition to the rights enumerated in G.S. 122C-51 through G.S. 122C-61,  
25 each adult client who is receiving treatment or habilitation in a 24-hour facility keeps the  
26 right to:

- 27 (1) Send and receive sealed mail and have access to writing material,  
28 postage, and staff assistance when necessary;  
29 (2) Contact and consult with, at his own expense and at no cost to the  
30 facility, legal counsel, private physicians, and private mental health,  
31 developmental disabilities, or substance abuse professionals of his  
32 choice; and  
33 (3) Contact and consult with a client advocate if there is a client advocate.

34 The rights specified in this subsection may not be restricted by the facility and each adult  
35 client may exercise these rights at all reasonable times.

36 (b) Except as provided in subsections (e) and (h) of this section, each adult client  
37 who is receiving treatment or habilitation in a 24-hour facility at all times keeps the right  
38 to:

- 39 (1) Make and receive confidential telephone calls. All long distance calls  
40 shall be paid for by the client at the time of making the call or made  
41 collect to the receiving party;

- 1 (2) Receive visitors between the hours of 8:00 a.m. and 9:00 p.m. for a  
2 period of at least six hours daily, two hours of which shall be after 6:00  
3 p.m.; however visiting shall not take precedence over therapies;
- 4 (3) Communicate and meet under appropriate supervision with individuals  
5 of his own choice upon the consent of the individuals;
- 6 (4) Make visits outside the custody of the facility unless:
- 7 a. Commitment proceedings were initiated as the result of the  
8 client's being charged with a violent crime, including a crime  
9 involving an assault with a deadly weapon, and the respondent  
10 was found not guilty by reason of insanity or incapable of  
11 proceeding;
- 12 b. The client was voluntarily admitted or committed to the facility  
13 while under order of commitment to a correctional facility of the  
14 Department of Correction; or
- 15 c. The client is being held to determine capacity to proceed  
16 pursuant to G.S. 15A-1002;
- 17 A court order may expressly authorize visits otherwise prohibited by the  
18 existence of the conditions prescribed by this subdivision;
- 19 (5) Be out of doors daily and have access to facilities and equipment for  
20 physical exercise several times a week;
- 21 (6) Except as prohibited by law, keep and use personal clothing and  
22 ~~possessions;~~ possessions, unless the client is being held to determine  
23 capacity to proceed pursuant to G.S. 15A-1002;
- 24 (7) Participate in religious worship;
- 25 (8) Keep and spend a reasonable sum of his own money;
- 26 (9) Retain a driver's license, unless otherwise prohibited by Chapter 20 of  
27 the General Statutes; and
- 28 (10) Have access to individual storage space for his private use.

29 (c) In addition to the rights enumerated in G.S. 122C-51 through G.S. 122C-57  
30 and G.S. 122C-59 through G.S. 122C-61, each minor client who is receiving treatment or  
31 habilitation in a 24-hour facility has the right to have access to proper adult supervision  
32 and guidance. In recognition of the minor's status as a developing individual, the  
33 minor shall be provided opportunities to enable him to mature physically, emotionally,  
34 intellectually, socially, and vocationally. In view of the physical, emotional, and  
35 intellectual immaturity of the minor, the 24-hour facility shall provide appropriate  
36 structure, supervision and control consistent with the rights given to the minor pursuant to  
37 this Article. The facility shall also, where practical, make reasonable efforts to ensure  
38 that each minor client receives treatment apart and separate from adult clients unless the  
39 treatment needs of the minor client dictate otherwise.

40 Each minor client who is receiving treatment or habilitation from a 24-hour facility  
41 has the right to:

- 42 (1) Communicate and consult with his parents or guardian or the agency or  
43 individual having legal custody of him;

1 (2) Contact and consult with, at his own expense or that of his legally  
2 responsible person and at no cost to the facility, legal counsel, private  
3 physicians, private mental health, developmental disabilities, or  
4 substance abuse professionals, of his or his legally responsible person's  
5 choice; and

6 (3) Contact and consult with a client advocate, if there is a client advocate.

7 The rights specified in this subsection may not be restricted by the facility and each  
8 minor client may exercise these rights at all reasonable times.

9 (d) Except as provided in subsections (e) and (h) of this section, each minor client  
10 who is receiving treatment or habilitation in a 24-hour facility has the right to:

11 (1) Make and receive telephone calls. All long distance calls shall be paid  
12 for by the client at the time of making the call or made collect to the  
13 receiving party;

14 (2) Send and receive mail and have access to writing materials, postage, and  
15 staff assistance when necessary;

16 (3) Under appropriate supervision, receive visitors between the hours of  
17 8:00 a.m. and 9:00 p.m. for a period of at least six hours daily, two  
18 hours of which shall be after 6:00 p.m.; however visiting shall not take  
19 precedence over school or therapies;

20 (4) Receive special education and vocational training in accordance with  
21 federal and State law;

22 (5) Be out of doors daily and participate in play, recreation, and physical  
23 exercise on a regular basis in accordance with his needs;

24 (6) Except as prohibited by law, keep and use personal clothing and  
25 possessions under appropriate ~~supervision~~; supervision, unless the client  
26 is being held to determine capacity to proceed pursuant to G.S. 15A-  
27 1002;

28 (7) Participate in religious worship;

29 (8) Have access to individual storage space for the safekeeping of personal  
30 belongings;

31 (9) Have access to and spend a reasonable sum of his own money; and

32 (10) Retain a driver's license, unless otherwise prohibited by Chapter 20 of  
33 the General Statutes.

34 (e) No right enumerated in subsections (b) or (d) of this section may be limited or  
35 restricted except by the qualified professional responsible for the formulation of the  
36 client's treatment or habilitation plan. A written statement shall be placed in the client's  
37 record that indicates the detailed reason for the restriction. The restriction shall be  
38 reasonable and related to the client's treatment or habilitation needs. A restriction is  
39 effective for a period not to exceed 30 days. An evaluation of each restriction shall be  
40 conducted by the qualified professional at least every seven days, at which time the  
41 restriction may be removed. Each evaluation of a restriction shall be documented in the  
42 client's record. Restrictions on rights may be renewed only by a written statement  
43 entered by the qualified professional in the client's record that states the reason for the

1 renewal of the restriction. In the case of an adult client who has not been adjudicated  
2 incompetent, in each instance of an initial restriction or renewal of a restriction of rights,  
3 an individual designated by the client shall, upon the consent of the client, be notified of  
4 the restriction and of the reason for it. In the case of a minor client or an incompetent  
5 adult client, the legally responsible person shall be notified of each instance of an initial  
6 restriction or renewal of a restriction of rights and of the reason for it. Notification of the  
7 designated individual or legally responsible person shall be documented in writing in the  
8 client's record.

9 (f) The Commission may adopt rules to implement subsection (e) of this section.

10 (g) With regard to clients being held to determine capacity to proceed pursuant to  
11 G.S. 15A-1002 or clients in a facility for substance abuse, and notwithstanding the prior  
12 provisions of this section, the Commission may adopt rules restricting the rights set forth  
13 under ~~(b)(2) and (d)(3)~~ (b)(2), (b)(3), and (d)(3) of this section if restrictions are necessary  
14 and reasonable in order to protect the health, safety, and welfare of the client involved or  
15 other clients.

16 (h) The rights stated in subdivisions (b)(2), (b)(4), (b)(5), (b)(10), (d)(3), (d)(5)  
17 and (d)(8) may be modified in a general hospital by that hospital to be the same as for  
18 other patients in that hospital; provided that any restriction of a specific client's rights  
19 shall be done in accordance with the provisions of subsection (e) of this section."

20 Sec. 3. This act becomes effective October 1, 1995. Section 1 applies to cases  
21 pending on or after that date, and Section 2 applies to client rights on or after that date.