

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 298

Short Title: Inpatient Commit./Cond't'l Release/AB.

(Public)

Sponsors: Representatives Hackney; Luebke, Gardner, and Goodwin.

Referred to: Mental Health, if favorable, Judiciary I.

March 4, 1999

A BILL TO BE ENTITLED

1 AN ACT TO PROVIDE FOR THE MONITORING AND SUPERVISION OF
2 PERSONS ON CONDITIONAL RELEASE FROM STATE PSYCHIATRIC
3 HOSPITALS.
4

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 122C-277 reads as rewritten:

7 "**§ 122C-277. Inpatient commitment; release ~~Release and conditional release;~~**
8 **judicial review.**

9 (a) Except as provided in subsections ~~(b) and (b1)~~ (e) and (f) of this section, the
10 attending physician shall discharge a committed respondent unconditionally at any time
11 ~~he the attending physician~~ determines that the respondent is no longer meets the criteria
12 for inpatient commitment specified in G.S. 122C-263(d)(2). in need of inpatient
13 commitment. Notice of discharge shall be furnished to the clerk of superior court of the
14 county of commitment and of the county in which the facility is located. However, if the
15 attending physician determines that the respondent meets the criteria for outpatient
16 commitment as defined in G.S. 122C-263(d)(1), ~~he the attending physician~~ may request
17 the clerk to calendar a supplemental hearing to determine whether an outpatient
18 commitment order shall be issued.

19 (b) Except as provided in subsections ~~(b) and (b1)~~ (e) and (f) of this section, the
20 attending physician may also release a respondent conditionally on a trial visit for periods

1 not in excess of 30 days on specified medically appropriate conditions. Violation of the
2 conditions is grounds for return of the respondent to the releasing facility. A law-
3 enforcement officer, on request of the attending physician, shall take a ~~conditional~~
4 ~~releasee-respondent on trial visit release~~ into custody and return ~~him~~ the respondent to the
5 facility in accordance with G.S. 122C-205. Notice of ~~discharge and of conditional trial~~
6 visit release shall be furnished to the clerk of superior court of the county of commitment
7 and of the county in which the facility is located.

8 (c) Except as provided in subsections (e) and (f) of this section, during a period of
9 inpatient commitment the attending physician may release a respondent conditionally for
10 a period of time not to exceed the remainder of the period of inpatient commitment if the
11 attending physician determines all of the following:

12 (1) The respondent continues to meet the criteria of G.S. 122C-263(d)(2).

13 (2) The respondent's current mental status and behavior is stable and
14 respondent is free of symptoms associated with previous episodes of
15 dangerous conduct.

16 (3) Based on respondent's psychiatric history, there is a reasonable
17 probability of future dangerous conduct if respondent is discharged to
18 the community without continued treatment, supervision, and the
19 assistance of others.

20 (4) Adequate treatment, supervision, and assistance for the respondent is
21 available from the area authority that serves the community where
22 respondent will reside upon release.

23 (5) Based on respondent's psychiatric history, there is a reasonable
24 probability that respondent will not voluntarily seek or comply with
25 recommended treatment upon release to the community unless adequate
26 supervision and assistance are given pursuant to a conditional release
27 plan developed in accordance with subsection (d) of this section.

28 (d) A respondent may be conditionally released pursuant to subsection (c) of this
29 section only after an individualized outpatient treatment plan has been developed and an
30 area authority has been designated to administer, and has agreed to provide, treatment in
31 accordance with the treatment plan and with G.S. 122C-273(e). With the participation of
32 the respondent, the treatment plan shall be jointly developed by the respondent's
33 attending physician at the releasing facility and the area director, or the area director's
34 designee, for the area authority that serves the community where the respondent will
35 reside upon conditional release. With the consent of the respondent, and as part of the
36 treatment planning process, the area authority shall consult with the respondent's next-of-
37 kin or other family members on strategies designed to support respondent's continued
38 mental stability and reduce the risk of future dangerous conduct. In addition to meeting
39 the requirements of G.S. 122C-273(e), the treatment plan shall include, but need not be
40 limited to, the following:

41 (1) Based upon an assessment of the respondent's psychiatric history and
42 risk factors, requirements for treatment or services designed to reduce
43 the respondent's risk for future dangerous conduct including, if any,

1 requirements for medication, case management, supervision, and other
2 services for the treatment of mental illness, developmental disabilities,
3 or substance abuse.

4 (2) Based upon an assessment of the respondent's psychiatric history and
5 risk factors, requirements if any, for assistance in obtaining basic needs
6 such as employment, transportation, food, clothing, shelter, or other
7 support services, when this assistance is necessary to reduce the
8 respondent's risk for future dangerous conduct.

9 (3) Conditions that the respondent must meet to be eligible for continued
10 conditional release and without which there exists a reasonable
11 probability of future dangerous conduct, including, as applicable, such
12 requirements as periodic reporting to treatment professionals at
13 designated time intervals, continuation of medication, and abstention
14 from alcohol and other drugs.

15 (4) The address of the residence where the respondent is to live upon
16 conditional release and the name of the person in charge of the
17 residence, if any.

18 Before conditional release, the attending physician of the releasing facility shall provide
19 to the respondent or the respondent's legally responsible person a copy and full
20 explanation of the treatment plan and conditions for release. With the consent of the
21 respondent, a copy and full explanation of the treatment plan and conditions for release
22 shall be provided to the respondent's next of kin. Notice of conditional release shall be
23 furnished to the clerk of superior court of the county of commitment, the county where
24 conditional release will be supervised, and of the county in which the 24-hour facility is
25 located. The respondent's violation of conditions for release is grounds for return of the
26 respondent to a 24-hour facility in accordance with G.S. 122C-273(e).

27 ~~(b)~~ (e) If the respondent was initially committed as the result of conduct resulting
28 in his being charged with a violent crime, including a crime involving an assault with a
29 deadly weapon, and respondent was found incapable of proceeding, 15 days before the
30 respondent's ~~discharge~~ ~~discharge, trial visit,~~ or conditional release the attending physician
31 shall notify the clerk of superior court of the county in which the facility is located of his
32 determination regarding the proposed ~~discharge~~ ~~discharge, trial visit,~~ or conditional
33 release. The clerk shall then schedule a rehearing to determine the appropriateness of
34 respondent's release under the standards of commitment set forth in G.S. 122C-271(b).
35 The clerk shall give notice as provided in G.S. 122C-264(d). The district attorney of the
36 district where respondent was found incapable of proceeding may represent the State's
37 interest at the hearing.

38 ~~(b1)~~ (f) If the respondent was initially committed pursuant to G.S. 15A-1321, 15
39 days before the respondent's ~~discharge~~ ~~discharge, trial visit,~~ or conditional release the
40 attending physician shall notify the clerk of superior court. The clerk shall calendar a
41 hearing and shall give notice as provided by G.S. 122C-264(d1). The district attorney for
42 the original trial may represent the State's interest at the hearing. The hearing shall be
43 conducted under the standards and procedures set forth in G.S. 122C-268.1. Provided,

1 that in no event shall ~~discharge~~ discharge, trial visit, or conditional release under this
2 section be allowed for a respondent during the period from automatic commitment to
3 hearing under G.S. 122C-268.1.

4 ~~(e)~~ (g) If a committed respondent under subsections (a), (b), ~~or (b1)~~ (c), (e), or (f)
5 of this section is from a single portal area, the attending physician shall plan jointly with
6 the area authority as prescribed in the area plan before discharging or releasing the
7 respondent."

8 Section 2. G.S. 122C-273 is amended by adding the following new subsection
9 to read:

10 "(e) Unless prohibited by Chapter 90 of the General Statutes, if the respondent on
11 inpatient commitment is conditionally released in accordance with G.S. 122C-277(c) and
12 (d), the area authority designated in the treatment plan, and any of its area facilities, may
13 administer to the respondent reasonable and appropriate medication and treatment that
14 are consistent with accepted medical standards. Before the respondent is conditionally
15 released, the inpatient facility releasing the respondent shall provide a copy of the
16 respondent's treatment plan and conditions for release to the area authority designated to
17 administer the treatment plan. As a condition of release, and in addition to any other
18 conditions required by G.S. 122C-277(d)(3), the initial treatment plan shall require the
19 respondent to meet face-to-face with a responsible professional no less than once every 7
20 days to ensure that the respondent is complying with the conditions for release and is
21 receiving treatment, supervision, and assistance necessary to prevent future dangerous
22 conduct or the need for treatment in a 24-hour facility. All of the following apply to
23 conditional release authorized under G.S. 122C-277(c) and (d) and this section.

24 (1) The medical director for the area authority shall require periodic reports
25 concerning the condition of respondents on conditional release from any
26 person assigned by the area authority to supervise a conditional release
27 treatment plan. The medical director, or the medical director's designee,
28 shall review the condition of a respondent on conditional release at least
29 once every 30 days. In conducting the review, the medical director or
30 the medical director's designee shall consider all reports and information
31 received and may require the respondent to report for further evaluation.

32 (2) The area authority medical director, or the medical director's designee,
33 may modify the treatment plan, including conditions for release, when
34 modification is consistent with the requirements of G.S. 122C-277(d).
35 The respondent shall be involved in and informed of any changes to the
36 treatment plan and conditions of release. A copy of the modified
37 treatment plan shall be placed in the respondent's medical record and
38 copies shall be provided to the respondent and any other persons who
39 received copies of the initial treatment plan in accordance with G.S.
40 122C-277(d).

41 (3) Notwithstanding the respondent's compliance with the conditions for
42 release, at any time that the area facility finds that conditional release is
43 no longer appropriate and the respondent is in need of inpatient

1 treatment, the area facility responsible for managing and supervising the
2 respondent's treatment shall request the court to order the respondent
3 taken into custody for the purpose of transportation to a 24-hour facility
4 designated by the area facility. Upon receipt of this request, the clerk or
5 magistrate shall issue an order to a law enforcement officer to take the
6 respondent into custody and to take the respondent immediately to the
7 designated 24-hour facility. Transportation to the 24-hour facility shall
8 be provided as specified in G.S. 122C-251. Within 24 hours of arrival
9 at the 24-hour facility, the respondent shall be examined by a physician
10 who shall act in accordance with the procedures specified in G.S. 122C-
11 266. If the respondent meets the criteria of G.S. 122C-266(a)(1), the
12 24-hour facility shall notify the clerk of court for the county in which
13 the 24-hour facility is located and request a supplemental hearing as
14 specified in G.S. 122C-274.1.

15 (4) If the respondent violates a condition of release, and unless compliance
16 is obtained within 24 hours of the violation, the area facility responsible
17 for management and supervision of the respondent's treatment shall
18 immediately request the court to order the respondent taken into custody
19 for the purpose of examination. Upon receipt of this request, the clerk or
20 magistrate shall issue an order to a law enforcement officer to take the
21 respondent into custody and to take the respondent immediately to the
22 designated area facility for examination. The law enforcement officer
23 shall turn the respondent over to the custody of the area facility for
24 examination by a physician or eligible psychologist. Upon examination,
25 if efforts to solicit compliance with conditions for release are successful
26 and the respondent is not in need of treatment in a 24-hour facility, the
27 respondent shall be released and returned home after the examination.
28 If efforts to solicit compliance with conditions for release fail or the
29 physician or eligible psychologist determines that conditional release is
30 no longer appropriate and the respondent needs inpatient treatment, the
31 law enforcement officer shall transport the respondent to a 24-hour
32 facility designated by the area facility. Transportation to the 24-hour
33 facility shall be provided as specified in G.S. 122C-251. Within 24
34 hours of arrival at the 24-hour facility, the respondent shall be examined
35 by a physician who shall act in accordance with the procedures specified
36 in G.S. 122C-266. If the respondent meets the criteria of G.S. 122C-
37 266(a)(1), the 24-hour facility shall notify the clerk of court for the
38 county in which the 24-hour facility is located and request a
39 supplemental hearing as specified in G.S. 122C-274.1.

40 (5) When an area authority physician seeks the return of the respondent to
41 an inpatient facility, the physician shall document and report grounds
42 for the return to the inpatient facility and the clerk of superior court of
43 the county where the conditional release is being supervised.

1 (6) Except as otherwise provided in this subdivision, during any period of
2 conditional release, if the area facility determines that the respondent no
3 longer meets the criteria set out in G.S. 122C-263(d)(2), the area facility
4 shall notify the court and the case shall be terminated. If the respondent
5 was initially committed as a result of conduct resulting in the respondent
6 being charged with a violent crime, including a crime involving an
7 assault with a deadly weapon, and the respondent was found incapable
8 of proceeding, the designated area facility shall so notify the clerk of
9 superior court of the county in which the area facility is located and the
10 clerk shall schedule a rehearing and provide notice in accordance with
11 G.S. 122C-276. If the respondent was initially committed pursuant to
12 G.S. 15A-1321, the area facility shall so notify the clerk of superior
13 court of the county in which the area facility is located and the clerk
14 shall schedule a rehearing and provide notice in accordance with G.S.
15 122C-276.1.

16 (7) Fifteen days before the end of the initial or subsequent periods of
17 commitment for a respondent on conditional release, the attending area
18 facility physician shall review and evaluate the condition of the
19 respondent. If the physician determines that the respondent continues to
20 meet the criteria of G.S. 122C-263(d)(2), the physician shall so notify
21 the clerk of superior court of the county in which the area facility is
22 located and the clerk shall schedule a rehearing and provide notice in
23 accordance with G.S. 122C-276. If the court orders inpatient
24 recommitment and the attending area facility physician determines that
25 the criteria for conditional release set out in G.S. 122C-277(c) continue
26 to exist, the attending physician shall continue the respondent on
27 conditional release for a period not to exceed the period of inpatient
28 commitment. Continuation of conditional release during a second or
29 subsequent inpatient recommitment order shall not require the
30 respondent's return to a 24-hour facility."

31 Section 3. Article 5 of Chapter 122C of the General Statutes is amended by
32 adding the following new section to read:

33 **"§ 122C-274.1. Supplemental hearings; conditional release.**

34 (a) Upon receipt of a request for a supplemental hearing requested pursuant to
35 G.S. 122C-273(e), the clerk shall calendar a hearing to be held within 10 days and shall
36 notify, at least 72 hours before the hearing, the petitioner, the respondent, the
37 respondent's attorney, and the area authority responsible for managing and supervising
38 the respondent's conditional release. Notice shall be provided in accordance with G.S.
39 122C-264(c). The procedures for the hearing shall be in accordance with G.S. 122C-268.

40 (b) At the supplemental hearing, the court may make one of the following
41 dispositions:

- 1 (1) If the court finds by clear, cogent, and convincing evidence that the
2 respondent has violated conditions for release, it shall order the
3 conditional release revoked.
- 4 (2) If the court finds by clear, cogent, and convincing evidence that the
5 criteria for conditional release specified in G.S. 122C-277(c) are no
6 longer met and that respondent continues to meet the criteria for
7 inpatient commitment, the court shall order the conditional release
8 revoked.
- 9 (3) If the court finds by clear, cogent, and convincing evidence that the
10 respondent continues to meet the conditional release criteria specified in
11 G.S. 122C-277(c) and that the respondent has not violated any condition
12 for release, the court shall order the respondent released under a
13 conditional release program recommended by the 24-hour facility and
14 the designated area authority in accordance with G.S. 122C-277(d)."

15 Section 4. G.S. 122C-269(a) reads as rewritten:

16 "(a) In all cases where the respondent is held at a 24-hour facility pending hearing
17 as provided in G.S. 122C-268, ~~G.S.~~122C-268.1, 122C-274.1, 122C-276.1, or 122C-
18 277(b1), unless the respondent through counsel objects to the venue, the hearing shall be
19 held in the county in which the facility is located. Upon objection to venue, the hearing
20 shall be held in the county where the petition was initiated, except as otherwise provided
21 in subsection (c) of this section."

22 Section 5. G.S. 122C-264(f) reads as rewritten:

23 "(f) Except as otherwise provided in this subsection, the ~~The~~ clerk of superior
24 court of the county where inpatient commitment hearings and rehearings are held shall
25 provide all notices, send all records and maintain a record of all proceedings as required
26 by this Part; ~~provided that if Part.~~ If the respondent has been committed to a 24-hour
27 facility in a county other than ~~his~~ the respondent's county of residence and the district
28 court hearing is held in the county of the facility, the clerk of superior court in the county
29 of the facility shall forward the record of the proceedings to the clerk of superior court in
30 the county of respondent's residence, where they shall be maintained by receiving clerk.
31 If a respondent on conditional release has been returned to a 24-hour facility for a hearing
32 under G.S. 274.1, and the records of the proceedings pertaining to the respondent's
33 inpatient commitment hearings, rehearings, and supplemental hearings are maintained by
34 the clerk of superior court of the county of the respondent's residence, then the clerk of
35 superior court shall forward the record of the proceedings to the clerk of superior court in
36 the county of the facility to which the respondent was returned, where they shall be
37 maintained by the receiving clerk."

38 Section 6. G.S. 122C-210.1 reads as rewritten:

39 "**§ 122C-210.1. Immunity from liability.**

40 No facility or any of its officials, staff, or employees, or any physician or other
41 individual who is responsible for the custody, examination, management, supervision,
42 treatment, or release of a client and who in good faith follows accepted professional
43 judgment, practice, and standards is civilly liable, personally or otherwise, for actions

1 arising from these responsibilities or for actions of the client. This immunity is in
2 addition to any other legal immunity from liability to which these facilities or individuals
3 may be entitled and applies to actions performed in connection with, or arising out of, the
4 admission or commitment of any individual pursuant to this Article."

5 Section 7. G.S. 122C-276(c) reads as rewritten:

6 "(c) Subject to the provisions of G.S. 122C-269(c) and G.S. 122C-273(e), rehearings
7 shall be held at the facility in which the respondent is receiving treatment. The judge is a
8 judge of the district court of the district court district as defined in G.S. 7A-133 in which
9 the facility is located or a district court judge temporarily assigned to that district."

10 Section 8. This act becomes effective January 1, 2000. Section 6 of this act
11 applies to actions taken on or after the effective date of this act.