

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 656
Committee Substitute Favorable 5/13/09

Short Title: MH Proceedings/No Restraint.

(Public)

Sponsors:

Referred to:

March 19, 2009

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT RESTRAINT OF INDIVIDUALS WHO ARE MINORS BEING
TRANSPORTED TO OR DURING HEARINGS PURSUANT TO INVOLUNTARY
COMMITMENT PROCEEDINGS, EXCEPT UNDER CERTAIN CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 122C-251(e) reads as rewritten:

"(e) ~~In~~ Except as otherwise provided in this subsection pertaining to respondents who are minors, in providing transportation to or from involuntary commitment hearings and proceedings as required by this section, the law-enforcement officer may use reasonable force to restrain the respondent if it appears necessary to protect himself, the respondent, or others. If the respondent is a minor, then the law-enforcement officer may not restrain the respondent-minor during transport to or from hearings and proceedings unless a district court judge finds that the restraints are reasonably necessary to maintain order, prevent the respondent-minor's escape, or provide for the safety of the respondent-minor. The judge shall take into consideration written recommendations of the treating clinician prior to the initial commitment hearing. The judge shall hold a hearing and provide the respondent-minor and the respondent-minor's attorney or other individual appointed to represent the respondent-minor an opportunity to be heard to contest the use of restraints before the judge orders the use of restraints. If restraints are ordered, the judge shall make findings of fact specific to each individual respondent-minor in support of the order. No law-enforcement officer may be held criminally or civilly liable for assault, false imprisonment, or other torts or crimes on account of reasonable measures taken under the authority of this Article."

SECTION 2. G.S. 122C-267(b) reads as rewritten:

"(b) The respondent shall be present at the hearing. A subpoena may be issued to compel the respondent's presence at a hearing. The petitioner and the proposed outpatient treatment physician or his designee may be present and may provide testimony. If the respondent is a minor, the respondent-minor may not be restrained unless the judge finds that the restraints are reasonably necessary to maintain order, prevent the respondent-minor's escape, or provide for the safety of the respondent-minor. The judge shall take into consideration written recommendations of the treating clinician prior to the initial commitment hearing. The judge shall hold a hearing and provide the respondent-minor and the respondent-minor's attorney or other individual appointed to represent the respondent-minor an opportunity to be heard to contest the use of restraints before the judge orders the use of restraints. If restraints are ordered, the judge shall make findings of fact specific to each individual respondent-minor in support of the order."

SECTION 3. G.S. 122C-268(g) reads as rewritten:



1 "(g) Hearings may be held in an appropriate room not used for treatment of clients at the
2 facility in which the respondent is being treated if it is located within the judge's district court
3 district as defined in G.S. 7A-133 or in the judge's chambers. A hearing may not be held in a
4 regular courtroom, over objection of the respondent, if in the discretion of a judge a more
5 suitable place is available. If the respondent is a minor and is present at the hearing, the
6 respondent-minor may not be restrained unless the judge finds that the restraints are reasonably
7 necessary to maintain order, prevent the respondent-minor's escape, or provide for the safety of
8 the respondent-minor. The judge shall take into consideration written recommendations of the
9 treating clinician prior to the initial commitment hearing. The judge shall hold a hearing and
10 provide the respondent-minor and the respondent-minor's attorney or other individual appointed
11 to represent the respondent-minor an opportunity to be heard to contest the use of restraints
12 before the judge orders the use of restraints. If restraints are ordered, the judge shall make
13 findings of fact specific to each individual respondent-minor in support of the order."

14 **SECTION 4.** This act is effective when it becomes law and applies to the
15 transportation of and proceedings involving respondent-minors under Part 6 of Article 5 of
16 Chapter 122C of the General Statutes occurring on and after that date.