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SESSION 2017

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SENATE BILL 630*
House Committee Substitute Favorable 6/13/18
Third Edition Engrossed 6/13/18

Short Title: Revise IVC Laws to Improve Behavioral Health.

(Public)

Sponsors:

Referred to:

April 5, 2017

1 A BILL TO BE ENTITLED
2 AN ACT REVISING THE LAWS PERTAINING TO INVOLUNTARY COMMITMENT IN
3 ORDER TO IMPROVE THE DELIVERY OF BEHAVIORAL HEALTH SERVICES IN
4 NORTH CAROLINA.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 122C-3 reads as rewritten:

7 "§ 122C-3. Definitions.

8 The following definitions apply in this Chapter:

9 ...

10 (8a) "Commitment examiner" means a physician, an eligible psychologist, or any
11 health professional or mental health professional who is certified under
12 G.S. 122C-263.1 to perform the first examination for involuntary commitment
13 described in G.S. 122C-263(c) or G.S. 122C-283(c) as required by Parts 7 and
14 8 of this Article.

15 ...

16 (11) "Dangerous to ~~himself~~self or others" means:

17 a. "Dangerous to ~~himself~~self" means that within the relevant past:

18 ...

19 (16a) "Health screening" means an appropriate screening suitable for the symptoms
20 presented and within the capability of the entity, including ancillary services
21 routinely available to the entity, to determine whether or not an emergency
22 medical condition exists. An emergency medical condition exists if an
23 individual has acute symptoms of sufficient severity, including severe pain,
24 such that the absence of immediate medical attention could reasonably be
25 expected to result in placing the individual's health in serious jeopardy, serious
26 impairment to bodily functions, or serious dysfunction of any bodily organ or
27 part.

28 (16b) "Incapable" with respect to an individual has the same definition set forth in
29 G.S. 122C-72(4). An adult individual who is incapable is not the same as an
30 incompetent adult unless the adult individual has been adjudicated
31 incompetent under Chapter 35A of the General Statutes.

32 (17) "Incompetent adult" means an adult individual who has been adjudicated
33 incompetent~~incompetent~~ under Chapter 35A of the General Statutes.

34 ...



1 (20) "Legally responsible person" means: (i) when applied to an adult, who has
 2 been adjudicated incompetent, a guardian; (ii) when applied to a minor, a
 3 parent, guardian, a person standing in loco parentis, or a legal custodian other
 4 than a parent who has been granted specific authority by law or in a custody
 5 order to consent for medical care, including psychiatric treatment; or (iii)
 6 when applied to an adult who is incapable as defined in ~~G.S.~~
 7 ~~122C-72(e)~~G.S. 122C-72(4) and who has not been adjudicated incompetent,
 8 a health care agent named pursuant to a valid health care power of
 9 ~~attorney~~attorney; provided that if an incapable adult does not have a health
 10 care agent or guardian, "legally responsible person" means one of the persons
 11 specified in subdivisions (3) through (7) of subsection (c) of G.S. 90-21.13, to
 12 be selected based on the priority indicated in said subdivisions (3) through (7).

13 ...
 14 (20b) "Local management entity" or "LME" means an area ~~authority, county~~
 15 ~~program, or consolidated human services agency. It is a collective term that~~
 16 ~~refers to functional responsibilities rather than governance structure.~~authority.

17 ...
 18 (27a) "Outpatient treatment physician or center" as used in Part 7 of Article 5 of this
 19 Chapter means a physician or center that provides treatment services directly
 20 to the outpatient commitment respondent. An LME/MCO that contracts with
 21 an outpatient treatment physician or center to provide outpatient treatment
 22 services to a respondent is not an outpatient treatment physician or center.
 23 Every LME/MCO is responsible for contracting with qualified providers of
 24 services in accordance with G.S. 122C-141, 122C-142(a),
 25 122C-115.2(b)(1)b., and 122C-115.4(b)(2) to ensure the availability of
 26 qualified providers of outpatient commitment services to clients of
 27 LME/MCOs who are respondents to outpatient commitment proceedings and
 28 meet the criteria for outpatient commitment. A contracted provider with an
 29 LME/MCO shall not be designated as an outpatient treatment physician or
 30 center on an outpatient commitment order unless the respondent enrolled with
 31 an LME/MCO or is eligible for services through an LME/MCO, or the
 32 respondent otherwise qualifies for the provision of services offered by the
 33 provider.

34 ...
 35 (29a) ~~"Program director" means the director of a county program established~~
 36 ~~pursuant to G.S. 122C-115.1.~~

37"

38 **SECTION 2.** G.S. 122C-4 reads as rewritten:

39 **"§ 122C-4. Use of phrase "client or his the legally responsible person."**

40 (a) Except as otherwise provided by law, whenever in this Chapter the phrase "client or
 41 ~~his~~the legally responsible person" is used, and the client is a minor or an incompetent adult, the
 42 duty or right involved shall be exercised not by the client, but by the legally responsible person.

43 (b) Except as otherwise provided by law, whenever in this Chapter the phrase "client or
 44 the legally responsible person" is used, and the client is an incapable adult who has not been
 45 adjudicated incompetent under Chapter 35A of the General Statutes, the duty or right involved
 46 shall be exercised not by the client but by a health care agent named pursuant to a valid health
 47 care power of attorney, if one exists, or by the client as expressed in a valid advance instruction
 48 for mental health treatment, if one exists. If no health care power of attorney or advance
 49 instruction for mental health treatment exists, the legally responsible person for an incapable
 50 adult who has not been adjudicated incompetent under Chapter 35A of the General Statutes shall

1 be one of the persons listed in subdivisions (3) through (7) of subsection (c) of G.S. 90-21.13, to
2 be selected based on the priority order indicated in said subdivisions (3) through (7)."

3 **SECTION 3.** G.S. 122C-53 reads as rewritten:

4 **"§ 122C-53. Exceptions; client.**

5 (a) A facility may disclose confidential information if the client or ~~his~~the legally
6 responsible person consents in writing to the release of the information to a specified person.
7 This release is valid for a specified length of time and is subject to revocation by the consenting
8 individual.

9 (b) A facility may disclose (i) the fact of admission or discharge of a client and (ii) the
10 time and location of admission or discharge to the client's next of kin whenever the responsible
11 professional determines that the disclosure is in the best interest of the client.

12 (c) Upon request a client shall have access to confidential information in ~~his client~~the
13 client's record except information that would be injurious to the client's physical or mental
14 well-being as determined by the attending physician or, if there is none, by the facility director
15 or ~~his~~the facility director's designee. If the attending physician or, if there is none, the facility
16 director or ~~his~~the facility director's designee has refused to provide confidential information to
17 a client, the client may request that the information be sent to a physician or psychologist of the
18 client's choice, and in this event the information shall be so provided.

19 (d) Except as provided by G.S. 90-21.4(b), upon request the legally responsible person
20 of a client shall have access to confidential information in the client's record; except information
21 that would be injurious to the client's physical or mental well-being as determined by the
22 attending physician or, if there is none, by the facility director or ~~his~~the facility director's
23 designee. If the attending physician or, if there is none, the facility director or ~~his~~the facility
24 director's designee has refused to provide confidential information to the legally responsible
25 person, the legally responsible person may request that the information be sent to a physician or
26 psychologist of the legally responsible person's choice, and in this event the information shall be
27 so provided.

28 (e) A client advocate's access to confidential information and ~~his~~the client's
29 responsibility for safeguarding this information are as provided by subsection (g) of this section.

30 (f) As used in subsection (g) of this section, the following terms have the meanings
31 specified:

32 (1) "Internal client advocate" means a client advocate who is employed by the
33 facility or has a written contractual agreement with the Department or with
34 the facility to provide monitoring and advocacy services to clients in the
35 facility in which the client is receiving ~~services; and~~services.

36 (2) "External client advocate" means a client advocate acting on behalf of a
37 particular client with the written consent and ~~authorization;~~authorization
38 under either of the following circumstances:

39 a. In the case of a client who is an adult and who has not been adjudicated
40 incompetent under Chapter 35A or former Chapters 33 or 35 of the
41 General Statutes, of the ~~client;~~or client.

42 b. In the case of any other client, of the client and ~~his~~the legally
43 responsible person.

44 (g) An internal client advocate shall be granted, without the consent of the client or ~~his~~
45 the legally responsible person, access to routine reports and other confidential information
46 necessary to fulfill ~~his~~monitoring and advocacy functions. In this role, the internal client
47 advocate may disclose confidential information received to the client involved, to ~~his~~the legally
48 responsible person, to the director of the facility or ~~his~~the director's designee, to other individuals
49 within the facility who are involved in the treatment or habilitation of the client, or to the
50 Secretary in accordance with the rules of the Commission. Any further disclosure shall require
51 the written consent of the client and ~~his~~the legally responsible person. An external client

1 advocate shall have access to confidential information only upon the written consent of the client
2 and his legally responsible person. In this role, the external client advocate may use the
3 information only as authorized by the client and his legally responsible person.

4"

5 **SECTION 4.** G.S. 122C-54 reads as rewritten:

6 "**§ 122C-54. Exceptions; abuse reports and court proceedings.**

7 ...

8 (a1) Upon a determination by the facility director or ~~his~~ the facility director's designee that
9 disclosure is in the best interests of the client, a facility may disclose confidential information for
10 purposes of filing a petition for involuntary commitment of a client pursuant to Article 5 of this
11 Chapter or for purposes of filing a petition for the adjudication of incompetency of the client and
12 the appointment of a guardian or an interim guardian under Chapter 35A of the General Statutes.

13 ...

14 (c) ~~Certified copies of written results of examinations by physicians and records in the~~
15 ~~eases of clients voluntarily admitted or involuntarily committed and facing~~ When an individual
16 is held at a facility under involuntary commitment or voluntary admission proceedings that
17 require district court hearings and/or rehearings pursuant to Article 5 of this Chapter ~~Chapter,~~
18 certified copies of written results of examinations, gathered during the course of the current
19 commitment or admission, shall be furnished by the facility to the client's counsel, the attorney
20 representing the State's interest, and the court. Upon request, the facility shall disclose to
21 respondent's counsel, the attorney representing the State's interest, and the court confidential
22 information collected, maintained, or used in attending or treating the respondent during the
23 proceeding for voluntary admission or involuntary commitment. Other medical records shall be
24 furnished only upon court order. The confidentiality of client information shall be preserved in
25 all matters except those pertaining to the necessity for admission or continued stay in the facility
26 or commitment under review. ~~The relevance of confidential information for which disclosure is~~
27 ~~sought in a particular case shall be determined by the court with jurisdiction over the matter.~~

28 ...

29 (e) Upon the request of the legally responsible person or the minor admitted or
30 committed, and after that minor has both been released and reached adulthood, the court records
31 of that minor made in proceedings pursuant to Article 5 of this Chapter may be expunged from
32 the files of the court. The minor and ~~his~~ the minor's legally responsible person shall be informed
33 in writing by the court of the right provided by this subsection at the time that the application for
34 admission is filed with the court.

35 ...

36 (g) A facility may disclose confidential information to an attorney who represents either
37 the facility or an employee of the facility, if such information is relevant to litigation, to the
38 operations of the facility, or to the provision of services by the facility. An employee may discuss
39 confidential information with ~~his~~ the employee's attorney or with an attorney representing the
40 facility in which ~~he~~ the employee is employed.

41"

42 **SECTION 5.** G.S. 122C-55 reads as rewritten:

43 "**§ 122C-55. Exceptions; care and treatment.**

44 (a) Any facility may share confidential information regarding any client of that facility
45 with any other facility when necessary to coordinate appropriate and effective care, treatment or
46 habilitation of the client. For the purposes of this section, ~~coordinate~~ the following definitions
47 apply:

48 (1) "Coordinate" means the provision, coordination, or management of mental
49 health, developmental disabilities, and substance abuse services and other
50 health or related services by one or more facilities and includes the referral of
51 a client from one facility to another.

1 (2) "Facility" and "area facility" include an area authority.

2 (3) "Secretary" includes any primary care case management programs that
3 contract with the Department to provide a primary care case management
4 program for recipients of publicly funded health and related services.

5 (a1) Any facility may share confidential information regarding any client of that facility
6 with the Secretary, and the Secretary may share confidential information regarding any client
7 with a facility when necessary to conduct quality assessment and improvement activities or to
8 coordinate appropriate and effective care, treatment or habilitation of the client. For purposes of
9 this subsection, subsection (a6), and subsection (a7) of this section, the purposes or activities for
10 which confidential information may be disclosed include, but are not limited to, case
11 management and care coordination, disease management, outcomes evaluation, the development
12 of clinical guidelines and protocols, the development of care management plans and systems,
13 population-based activities relating to improving or reducing health care costs, and the provision,
14 coordination, or management of mental health, developmental disabilities, and substance abuse
15 services and other health or related services. ~~As used in this section, "facility" includes an LME~~
16 ~~and "Secretary" includes the Community Care of North Carolina Program, or other primary care~~
17 ~~ease management programs that contract with the Department to provide a primary care case~~
18 ~~management program for recipients of publicly funded health and related services.~~

19 (a2) Any ~~area~~ or State facility or the psychiatric service of the University of North Carolina
20 Hospitals at Chapel Hill may share confidential information regarding any client of that facility
21 with any other area facility or State facility or the psychiatric service of the University of North
22 Carolina Hospitals at Chapel Hill when necessary to conduct payment activities relating to an
23 individual served by the facility. Payment activities are activities undertaken by a facility to
24 obtain payment or ~~provide~~ receive reimbursement for the provision of services and may include,
25 but are not limited to, determinations of eligibility or coverage, coordination of benefits,
26 determinations of cost-sharing amounts, claims management, claims processing, claims
27 adjudication, claims appeals, billing and collection activities, medical necessity reviews,
28 utilization management and review, precertification and preauthorization of services, concurrent
29 and retrospective review of services, and appeals related to utilization management and review.

30 (a3) Whenever there is reason to believe that a client is eligible for benefits through a
31 Department program, any State or ~~area~~ facility or the psychiatric service of the University of
32 North Carolina Hospitals at Chapel Hill may share confidential information regarding any client
33 of that facility with the Secretary, and the Secretary may share confidential information regarding
34 any client with an area facility or State facility or the psychiatric services of the University of
35 North Carolina Hospitals at Chapel Hill. Disclosure is limited to that information necessary to
36 establish initial eligibility for benefits, determine continued eligibility over time, and obtain
37 reimbursement for the costs of services provided to the client.

38 ...

39 (c1) A facility may furnish confidential information in its possession to the sheriff of any
40 county when requested by the sheriff regarding any client of that facility who is confined in the
41 county's jail or jail annex when the inmate has been determined by the county jail medical unit
42 to be in need of treatment for mental illness, developmental disabilities, or substance abuse. The
43 sheriff may furnish to a facility confidential information in its possession about treatment for
44 mental illness, developmental disabilities, or substance abuse that the county jail medical unit
45 has provided to any present or former inmate if the inmate is presently seeking treatment from
46 the requesting facility or if the inmate has been involuntarily committed to the requesting facility
47 for inpatient or outpatient treatment. Under the circumstances described in this subsection, the
48 consent of the client or inmate shall not be required in order for this information to be furnished
49 and the information shall be furnished despite objection by the client or inmate. Confidential
50 information disclosed pursuant to this subsection is restricted from further disclosure.

51 "

1 **SECTION 6.** G.S. 122C-115.4 reads as rewritten:

2 "**§ 122C-115.4. Functions of local management entities.**

3 ...

4 (b) The primary functions of an LME are designated in this subsection and shall not be
5 conducted by any other entity unless an LME voluntarily enters into a contract with that entity
6 under subsection (c) of this section. The primary functions include all of the following:

7 ...

8 (7a) Community crisis services planning in accordance with G.S. 122C-202.2.

9 "

10 **SECTION 7.** G.S. 122C-117 reads as rewritten:

11 "**§ 122C-117. Powers and duties of the area authority.**

12 (a) The area authority shall do all of the following:

13 ...

14 (18) Develop and adopt community crisis services plans in accordance with
15 G.S. 122C-202.2

16 "

17 **SECTION 8.** Part 1 of Article 5 of Chapter 122C of the General Statutes is amended
18 by adding a new section to read:

19 "**§ 122C-202.2. LME/MCO community crisis services plan; commitment examiners;**
20 **transporting agencies; training; collaboration.**

21 (a) Every LME/MCO shall adopt a community crisis services plan in accordance with
22 this section to facilitate first examination in conjunction with a health screening at the same
23 location required pursuant to Parts 7 and 8 of this Article within its catchment area. The
24 community crisis services plan for the LME/MCO's catchment area shall be comprised of
25 separate plans, known as "local area crisis services plans" for each of the local areas or regions
26 within the catchment area that the LME/MCO identifies as an appropriate local planning area,
27 taking into consideration the available resources and interested stakeholders within a particular
28 geographic area or region of the catchment area. Each LME/MCO may determine the number
29 and geographic boundaries of the local planning areas within its catchment area. Each local area
30 crisis services plan shall, for the local area covered by the local plan, do at least all of the
31 following:

32 (1) Incorporate the involuntary commitment transportation agreement adopted
33 pursuant to G.S. 122C-251(g) for the cities and counties within the local
34 planning areas which identifies the law enforcement officers, designees under
35 G.S. 122C-251(g), or individuals or entities otherwise required to provide
36 custody and transportation of a respondent for a first examination in
37 conjunction with a health screening at the same location required by
38 G.S. 122C-263(a) and G.S. 122C-283. Notwithstanding the foregoing,
39 counties and cities shall retain the responsibilities for custody and
40 transportation set forth in this Article, except as otherwise set forth in a plan
41 developed, agreed upon, and adopted in compliance with this section and
42 G.S. 122C-251(g).

43 (2) Identify one or more area facilities or other locations in accordance with
44 G.S. 122C-263 and G.S. 122C-283. Each LME/MCO shall contract with one
45 or more facilities or other locations described in G.S. 122C-263 and
46 G.S. 122C-283 for the provision of health screenings and first examinations
47 required by G.S. 122C-263 and G.S. 122C-283 for the provision of first
48 examination in conjunction with a health screening required by
49 G.S. 122C-263 and G.S. 122C-283, to meet the needs of its local planning
50 area.

1 (3) Identify available training for law enforcement personnel and other persons
2 designated or required under G.S. 122C-251(g) to provide transportation and
3 custody of involuntary commitment respondents. Law enforcement officers
4 may request to participate in the training program identified by the
5 LME/MCO. Persons who are designated in compliance with
6 G.S. 122C-251(g) to provide all or part of the transportation and custody
7 required for involuntary commitment proceedings under this Article and who
8 are not law enforcement officers shall participate in the training. To the extent
9 feasible, the identified training shall address the use of de-escalation strategies
10 and techniques, the safe use of force and restraint, respondent rights relevant
11 to custody and transportation, the location of any area facilities identified by
12 the LME/MCO pursuant to subdivision (1) of this subsection, and the
13 completion and return of the custody order to the clerk of superior court. The
14 training identified by the LME/MCO may be comprised of one or more
15 programs and may include a Crisis Intervention Team program or other mental
16 health training program or a combination of these programs.

17 (b) Law enforcement agencies, acute care hospitals, magistrates, area facilities with
18 identified commitment examiners, and other affected agencies shall participate with the
19 LME/MCO in the development of the local area crisis services plans described in this section.
20 Other stakeholders and community partners identified by the LME/MCO may be invited to
21 participate in the planning. No local area crisis services plan developed under this section shall
22 be adopted or thereafter be effective or implemented unless such plan first has been mutually
23 agreed upon in writing by all entities identified in the plan pursuant to subsection (a) of this
24 section. If any member of the Crisis Planning Committee fails to agree to the plan in writing, the
25 Secretary shall develop a procedure to attempt to resolve the conflict in order to achieve approval
26 of the Plan.

27 (c) The plans adopted under this section may, by mutual agreement of all entities
28 identified in the plan, address any other matters necessary to facilitate the custody, transportation,
29 examination, and treatment of respondents to commitment proceedings under Parts 7 and 8 of
30 this Article."

31 **SECTION 9.** G.S. 122C-206 reads as rewritten:

32 "**§ 122C-206. Transfers of clients between 24-hour ~~facilities~~ facilities; transfer of clients**
33 **from 24-hour facilities to acute care hospitals.**

34 (a) Before transferring a voluntary adult client from one 24-hour facility to another, the
35 responsible professional at the original facility shall: (i) get authorization from the receiving
36 facility that the facility will admit the client; (ii) get consent from the client; and (iii) if consent
37 to share information is granted by the client, or if the disclosure of information is permitted under
38 G.S. 122C-53(b), notify the next of kin of the time and location of the transfer. The preceding
39 requirements of this paragraph may be waived if the client has been admitted under emergency
40 procedures to a State facility not serving the client's region of the State. Following an emergency
41 admission, the client may be transferred to the appropriate State facility without consent
42 according to the rules of the Commission.

43 (b) Before transferring a respondent held for a district court hearing or a committed
44 respondent from one 24-hour facility to another, the responsible professional at the original
45 facility shall:

- 46 (1) Obtain authorization from the receiving facility that the facility will admit the
47 respondent; and
48 (2) Provide reasonable notice to the ~~respondent, or respondent~~ or the legally
49 responsible person, and to the respondent's counsel, of the reason for the
50 transfer and document the notice in the client's record.

1 No later ~~that~~ than 24 hours after the transfer, the responsible professional at the original
2 facility shall notify the petitioner, the clerk of court, the respondent's counsel, and, if consent is
3 granted by the respondent, or if the disclosure of the information is permitted under G.S. 122C-53
4 or other applicable law, the next of kin, that the transfer is ~~completed~~ complete. If the transfer is
5 completed before the judicial commitment hearing, these proceedings shall be initiated by the
6 receiving facility. If the respondent is a minor, an incompetent adult, or is deemed incapable,
7 then the responsible professional at the original facility shall, not later than 24 hours after the
8 transfer, notify the respondent's legally responsible person of the location of the transfer and that
9 the transfer is complete.

10 (c) Minors and incompetent adults, admitted pursuant to Parts 3 and 4 of this Article,
11 may be transferred from one 24-hour facility to another following the same procedures specified
12 in subsection (b) of this section. In addition, the legally responsible person shall be consulted
13 before the proposed ~~transfer~~ transfer and notified, within 24 hours after the transfer is complete,
14 of the location of the transfer and that the transfer is complete. If the transfer is completed before
15 the judicial determination required in G.S. 122C-223 or G.S. 122C-232, these proceedings shall
16 be initiated by the receiving facility.

17 (c1) If a client described in subsections (b) or (c) of this section is to be transferred from
18 one 24-hour facility to ~~another~~ another, or to an acute care hospital pursuant to subsection (e) of
19 this section, and transportation is needed, the responsible professional at the original facility shall
20 notify the clerk of court or magistrate, and the clerk of court or magistrate shall issue a custody
21 order for transportation of the client as provided by G.S. 122C-251.

22 (d) Minors and incompetent adults, admitted pursuant to Part 5 of this Article and
23 incapable adults admitted pursuant to Part 2A of this Article, may be transferred from one
24 24-hour facility to another provided that prior to transfer the responsible professional at the
25 original facility shall:

- 26 (1) Obtain authorization from the receiving facility that the facility will admit the
27 client; and
- 28 (2) Provide reasonable notice to the client regarding the reason for transfer and
29 document the notice in the client's record; and
- 30 (3) Provide reasonable notice to and consult with the legally responsible person
31 regarding the reason for the transfer and document the notice and consultation
32 in the client's record.

33 No later than 24 hours after the transfer, the responsible professional at the original facility
34 shall notify the legally responsible person that the transfer is completed.

35 (e) The responsible professional may transfer a client from one 24-hour facility to another
36 or to an acute care hospital for emergency medical treatment, emergency medical evaluation, or
37 emergency surgery without notice to or consent from the client. Within a reasonable period of
38 time the responsible professional shall notify the next of kin or the legally responsible person of
39 the client of the transfer.

40 (f) When a client is transferred from one 24-hour facility to another ~~facility~~ solely for
41 medical reasons, the client shall be returned to the original facility when the medical care is
42 completed unless the responsible professionals at both facilities concur that discharge of the
43 client who is not subject to G.S. 122C-266(b) is appropriate.

44 (f1) When a client is transferred from a 24-hour facility to an acute care hospital solely
45 for medical reasons, the hospital shall return the client to the original facility as soon as the next
46 client space becomes available at the original facility after completion of the client's medical
47 care. With the exception of facility-based crisis centers, the original facility must allow at least
48 12 hours for the client's return before assigning the client's room or bed to another patient, unless
49 both facilities agree that return of the client in this time period is not feasible. The original facility
50 must accept the return of the client in priority over other clients seeking admission, except in the
51 cases of patients designated incapable to proceed to trial by court order. If the responsible

1 professionals at both facilities concur that discharge of a client who is not subject to
2 G.S. 122C-266(b) is appropriate, the client may be discharged. If, at the time of the transfer, a
3 client is being held under a custody order pending a second commitment examination or a district
4 court hearing under involuntary commitment proceedings, the custody order shall remain valid
5 throughout the period of time necessary to complete the client's medical care and transport the
6 client between the 24-hour facility and the acute care hospital; provided, however, that the
7 requirement for a timely hearing under G.S. 122C-268(a) applies. Any decision to terminate the
8 proceedings because the respondent no longer meets the criteria for commitment or because a
9 hearing cannot be held within the time required by G.S. 122C-268(a) shall be documented and
10 reported to the clerk of superior court in accordance with G.S. 122C-266(c).

11 (g) The Commission may adopt rules to implement this section."

12 **SECTION 10.** G.S. 122C-210.1 reads as rewritten:

13 **"§ 122C-210.1. Immunity from liability.**

14 No facility-facility, person, or entity, including an area facility, a facility licensed under this
15 Chapter, an acute care hospital, a general hospital, an area authority, a law enforcement officer,
16 an LME, or an LME/MCO, or any of its-their officials, staff, or employees, or any other physician
17 or other individual who is responsible for the custody, transportation, examination, admission,
18 management, supervision, treatment, or release of a respondent or client and who follows
19 accepted professional judgment, practice, and standards is not grossly negligent, is civilly or
20 criminally liable, personally or otherwise, for that person's or entity's actions or omissions arising
21 from these responsibilities or for the actions or omissions of the-a respondent or client. This
22 immunity is in addition to any other legal immunity from liability to which these facilities
23 persons, entities, facilities, agencies, or individuals may be entitled and applies to actions
24 performed in connection with, or arising out of, the admission-or-commitment-custody,
25 transportation, examination, commitment, admission, management, supervision, treatment, or
26 release of any individual pursuant to or under the authority of this Article-Article or otherwise."

27 **SECTION 11.** G.S. 122C-210.3 reads as rewritten:

28 **"§ 122C-210.3. Electronic and facsimile transmission of custody orders.**

29 A custody order entered by the clerk or magistrate pursuant to this Chapter may be delivered
30 to the law enforcement officer or other person designated or required to provide transportation
31 and custody pursuant to G.S. 122C-251 by electronic or facsimile transmission."

32 **SECTION 12.** G.S. 122C-211 reads as rewritten:

33 **"§ 122C-211. Admissions.**

34 (a) Except as provided in subsections (b) through ~~(f)~~-(f) of this section, any individual,
35 including a parent in a family unit, in need of treatment for mental illness or substance abuse may
36 seek voluntary admission at any facility by presenting himself or herself for evaluation to the
37 facility. No physician's statement is necessary, but a written application for evaluation or
38 admission, signed by the individual seeking admission, or the individual's legally responsible
39 person, is required. The application form shall be available at all times at all facilities. However,
40 no one shall be denied admission because application forms are not available. An evaluation shall
41 determine whether the individual is in need of care, treatment, habilitation or rehabilitation for
42 mental illness or substance abuse or further evaluation by the facility. Information provided by
43 family members regarding the individual's need for treatment shall be reviewed in the evaluation.
44 If applicable, information provided in an advance instruction for mental health treatment by the
45 client or the client's legally responsible person shall be reviewed in the evaluation. An individual
46 may not be accepted as a client if the facility determines that the individual does not need or
47 cannot benefit from the care, treatment, habilitation, or rehabilitation available and that the
48 individual is not in need of further evaluation by the facility. The facility shall give to an
49 individual who is denied admission a referral to another facility or facilities that may be able to
50 provide the treatment needed by the client.

51 ...

1 ~~(e) When an individual from a single portal area seeks admission to an area or State~~
 2 ~~24-hour facility, the admission shall follow the procedures as prescribed in the area plan. When~~
 3 ~~an individual from a single portal area presents himself for admission to the facility directly and~~
 4 ~~is in need of an emergency admission, the individual may be accepted for admission. The facility~~
 5 ~~shall notify the area authority within 24 hours of the admission. Further planning of treatment for~~
 6 ~~the client is the joint responsibility of the area authority and the facility as prescribed in the area~~
 7 ~~plan.~~

8 ~~...~~
 9 ~~(f1) An individual in need of treatment for mental illness may be admitted to a facility~~
 10 ~~pursuant to an advance instruction for mental health treatment or pursuant to the authority of a~~
 11 ~~health care agent named in a valid health care power of attorney, provided that the individual is~~
 12 ~~incapable, as defined in G.S. 122C-72(4) at the time of the need for admission. An individual~~
 13 ~~admitted to a facility pursuant to an advance instruction for mental health treatment may not be~~
 14 ~~retained for more than 10 days, except as provided for in subsection (b) of this section. When a~~
 15 ~~health care power of attorney authorizes a health care agent to seek the admission of an incapable~~
 16 ~~individual, the health care agent shall act for the individual in applying for admission to a facility~~
 17 ~~and in consenting to medical treatment at the facility when consent is required, provided that the~~
 18 ~~individual is incapable.~~

19 ~~...."~~

20 **SECTION 13.** G.S. 122C-212 reads as rewritten:

21 "**§ 122C-212. Discharges.**

22 (a) Except as provided in ~~subsections subsection~~ (b) and (e) of this section, an individual
 23 who has been voluntarily admitted to a facility shall be discharged upon ~~his the individual's~~ own
 24 request. A request for discharge from a 24-hour facility shall be in writing.

25 (b) An individual who has been voluntarily admitted to a 24-hour facility may be held for
 26 72 hours after ~~his the individual's~~ written application for discharge is submitted.

27 ~~(e) When an individual from a single portal area who has been voluntarily admitted to an~~
 28 ~~area or State 24-hour facility is discharged, the discharge shall follow the procedures as~~
 29 ~~prescribed in the area plan."~~

30 **SECTION 14.** Article 5 of Chapter 122C of the General Statutes is amended by
 31 adding a new Part to read:

32 "Part 2A. Voluntary Admissions and Discharges; Incapable Adults; Facilities for Individuals
 33 With Mental Illness and Substance Use Disorder.

34 "**§ 122C-213. Voluntary admission of individuals determined to be incapable.**

35 (a) An individual in need of treatment for mental illness and who is incapable, as defined
 36 in G.S. 122C-3 and G.S. 122C-72, may be admitted to and treated in a facility pursuant to an
 37 advance instruction for mental health treatment executed in accordance with Part 2 of Article 3
 38 of this Chapter or pursuant to the authority of a health care agent named in a valid health care
 39 power of attorney executed in accordance with Article 3 of Chapter 32A of the General Statutes.

40 (b) Except as otherwise provided in this Part, G.S. 122C-211 applies to admissions of
 41 incapable adults under this Part.

42 (c) An advance instruction for mental health treatment shall be governed by Part 2 of
 43 Article 3 of this Chapter.

44 (d) When a health care power of attorney authorizes a health care agent pursuant to
 45 G.S. 32A-19 to make mental health treatment decisions for an incapable individual, the health
 46 care agent shall act for the individual in applying for admission and consenting to treatment at a
 47 facility, consistent with the extent and limitations of authority granted in the health care power
 48 of attorney for as long as the individual remains incapable.

49 (e) A 24-hour facility may not hold an individual under a voluntary admission who is
 50 determined to be incapable at the time of admission and who is admitted pursuant to an advance
 51 instruction for mental health treatment for more than 15 days, except as provided in

1 G.S. 122C-211(b); provided, however, that an individual who regains sufficient understanding
2 and capacity to make and communicate mental health treatment decisions may elect to continue
3 his or her admission and treatment pursuant to the individual's informed consent in accordance
4 with G.S. 122C-211. A 24-hour facility may file a petition for involuntary commitment pursuant
5 to Article 5 of this Chapter if an individual meets applicable criteria at the conclusion of this
6 15-day period.

7 **"§ 122C-214. Discharge of individuals determined to be incapable.**

8 (a) The responsible professional shall unconditionally discharge an individual admitted
9 to a facility pursuant to this Part at any time it is determined the individual is no longer mentally
10 ill or in need of treatment at the facility.

11 (b) An individual who has been voluntarily admitted to a facility pursuant to this Part and
12 who is no longer deemed incapable shall be discharged upon his or her own request. An
13 individual's request for discharge from a 24-hour facility shall be in writing. A facility may hold
14 an individual who has been voluntarily admitted to a 24-hour facility pursuant to this Part for up
15 to 72 hours after the individual submits a written request for discharge, but the facility shall
16 release the individual upon the expiration of 72 hours following submission of the written request
17 for discharge unless the responsible professional obtains an order under Part 7 or 8 of this Article
18 to hold the client.

19 (c) A health care agent named in a valid health care power of attorney or the legally
20 responsible person may submit on behalf of an individual admitted to a facility under this Part a
21 written request to have the individual discharged from the facility, provided (i) the individual
22 remains incapable at the time of the request and (ii) the request is not inconsistent with the
23 authority expressed in the health care power of attorney or other controlling document. A facility
24 may hold an individual for up to 72 hours after a health care agent submits a written request for
25 the individual's discharge but shall release the individual upon the expiration of 72 hours
26 following submission of the written request for discharge unless the responsible professional
27 obtains an order under Part 7 or 8 of this Article to hold the client.

28 (d) If, in the opinion of a physician or eligible psychologist, an individual admitted to a
29 facility under this Part regains sufficient understanding and capacity to make and communicate
30 mental health treatment decisions while in treatment, and the individual refuses to sign an
31 authorization for continued treatment within 72 hours after regaining decisional capacity, the
32 facility shall discharge the individual unless the responsible professional obtains an order under
33 Part 7 or 8 of this Article to hold the client.

34 (e) In any case in which an order is issued authorizing the involuntary commitment of an
35 individual admitted to a facility under this Part, the facility's further treatment and holding of the
36 individual shall be in accordance with Part 7 or 8 of this Article, whichever is applicable."

37 **SECTION 15.** G.S. 122C-221 reads as rewritten:

38 **"§ 122C-221. Admissions.**

39 (a) Except as otherwise provided in this Part, a minor may be admitted to a facility if the
40 minor is mentally ill or a substance abuser and in need of treatment. Except as otherwise provided
41 in this Part, the provisions of G.S. 122C-211 shall apply to admissions of minors under this Part.
42 Except as provided in G.S. 90-21.5, in applying for admission to a facility, in consenting to
43 medical treatment when consent is required, and in any other legal procedure under this Article,
44 the legally responsible person shall act for the minor. The application of the minor shall be in
45 writing and signed by the legally responsible person. If a minor reaches the age of 18 while in
46 treatment under this Part, further treatment is authorized only on the written authorization of the
47 client or under the provisions of Part 7 or Part 8 of Article 5 of this Chapter.

48"

49 **SECTION 16.** G.S. 122C-224(c) reads as rewritten:

50 **"§ 122C-224. Judicial review of voluntary admission.**

51 ...

1 (c) Within 24 hours after admission, the facility shall notify the clerk of court in the
2 county where the facility is located that the minor has been admitted and that a hearing for
3 concurrence in the admission must be scheduled. At the time notice is given to schedule a hearing,
4 the facility shall (i) notify the clerk of the names and addresses of the legally responsible person
5 and the responsible ~~professional~~ professional and (ii) provide the clerk with a copy of the legally
6 responsible person's written application for admission of the minor and the facility's written
7 evaluation of the minor, both of which are required under G.S. 122C-211(a)."

8 **SECTION 17.** Part 4 of Article 5 of Chapter 122C of the General Statutes is amended
9 by adding a new section to read:

10 **"§ 122C-230. Applicability of Part 4.**

11 This Part applies to adults who are adjudicated incompetent by a court of competent
12 jurisdiction. This Part does not apply to the admission of adults who are deemed incapable but
13 who have not been adjudicated incompetent."

14 **SECTION 18.** G.S. 122C-232 reads as rewritten:

15 **"§ 122C-232. Judicial determination.**

16 (a) When an incompetent adult is admitted to a 24-hour facility where the incompetent
17 adult will be subjected to the same restrictions on ~~his~~ freedom of movement present in the State
18 facilities for the mentally ill, or to similar restrictions, a hearing shall be held in the district court
19 in the county in which the 24-hour facility is located within 10 days ~~of~~ after the day ~~that~~ the
20 incompetent adult is admitted to the facility. A continuance of not more than five days may be
21 granted upon motion ~~of~~ any of the following:

- 22 (1) The ~~court~~; court.
- 23 (2) Respondent's ~~counsel~~; or counsel.
- 24 (3) The responsible professional.

25 The Commission shall adopt rules governing procedures for admission to other 24-hour facilities
26 not falling within the category of facilities where freedom of movement is restricted; these rules
27 shall be designed to ensure that no incompetent adult is improperly admitted to or remains in a
28 facility.

29 (a1) Prior to admission, the facility shall provide the incompetent adult and the legally
30 responsible person with written information describing the procedures for court review of the
31 admission and the procedures for discharge.

32 (a2) Within 24 hours after admission, the facility shall notify the clerk of court of the
33 county in which the facility is located that the incompetent adult has been admitted and that a
34 hearing for concurrence in the admission must be scheduled. At the time the facility provides
35 notice to the court to schedule a hearing for concurrence, the facility shall notify the clerk of the
36 names and addresses of the legally responsible person and the responsible professional and
37 provide a copy of the legally responsible person's written application for evaluation or admission
38 of the incompetent adult and the facility's evaluation of the incompetent adult.

39 (b) In any case requiring the hearing described in subsection (a) of this section, no petition
40 is necessary; the written application for voluntary admission shall serve as the initiating
41 document for the hearing. The court shall determine whether the incompetent adult is mentally
42 ill or a substance abuser and is in need of further treatment at the facility. Further treatment at the
43 facility should be undertaken only when lesser measures will be insufficient. If the court finds by
44 clear, cogent, and convincing evidence that these requirements have been met, the court shall
45 concur with the voluntary admission of the incompetent ~~adult~~ adult and set the length of the
46 authorized admission for a period not to exceed 90 days. If the court finds that these requirements
47 have not been met, it shall order that the incompetent adult be released. A finding of
48 dangerousness to self or others is not necessary to support the determination that further treatment
49 should be undertaken.

50 ...

1 (d) In addition to the notice of hearings and rehearings to the incompetent adult and his
2 or her counsel required under Part 7 of this Article, notice shall be given by the clerk to the legally
3 responsible ~~person, person~~ or ~~his successor~~ a successor to the legally responsible person. The
4 legally responsible ~~person, or his~~ person or a successor to the legally responsible person may also
5 file with the clerk of court a written waiver of ~~his~~ the right to receive notice."

6 **SECTION 19.** G.S. 122C-251 reads as rewritten:

7 "**§ 122C-251. ~~Transportation.~~ Custody and transportation.**

8 (a) Except as provided in subsections ~~(f)~~ (c), (f), and (g), transportation of a respondent
9 within a county under the involuntary commitment proceedings of this Article, including
10 admission and discharge, shall be provided by the city or county. The city has the duty to provide
11 transportation of a respondent who is a resident of the city or who is physically taken into custody
12 in the city limits. The county has the duty to provide transportation for a respondent who resides
13 in the county outside city limits or who is physically taken into custody outside of city limits.
14 However, cities and counties may contract with each other to provide transportation.

15 (b) Except as provided in subsections ~~(f)~~ (c), (f), and (g) or in G.S. 122C-408(b),
16 transportation between counties under the involuntary commitment proceedings of this Article
17 for a first examination as described in G.S. 122C-263(a) and G.S. 122C-283(a) and for admission
18 to a 24-hour facility shall be provided by the county where the respondent is taken into custody.
19 Transportation between counties under the involuntary commitment proceedings of this Article
20 for respondents held in 24-hour facilities who have requested a change of venue for the district
21 court hearing shall be provided by the county where the petition for involuntary commitment was
22 initiated. Transportation between counties under the involuntary commitment proceedings of this
23 Article for discharge of a respondent from a 24-hour facility shall be provided by the county of
24 residence of the respondent. However, a respondent being discharged from a facility may use his
25 own transportation at his own expense.

26 (c) Transportation of a respondent may be (i) by city- or county-owned vehicles ~~or~~
27 vehicles, (ii) by private vehicle by contract with the city or county, or (iii) as provided in
28 an agreement developed and adopted under subsection (g) of this section and G.S. 122C-202.2.
29 To the extent feasible, law enforcement officers transporting respondents shall dress in plain
30 clothes and shall travel in unmarked vehicles. Further, law enforcement officers, to the extent
31 possible, shall advise respondents when taking them into custody that they are not under arrest
32 and have not committed a crime, but are being taken into custody and transported to receive
33 treatment and for their own safety and that of others.

34 (d) To the extent feasible, in providing transportation of a respondent, a city or county
35 shall provide a driver or attendant who is the same sex as the respondent, unless the
36 ~~law enforcement~~ law enforcement officer allows a family member of the respondent to
37 accompany the respondent in lieu of an attendant of the same sex as the respondent.

38 (e) In taking custody and providing transportation as required by this section, the
39 ~~law enforcement~~ law enforcement officer may use reasonable force to restrain the respondent if
40 it appears necessary to protect ~~himself,~~ the law enforcement officer, the respondent, or others.
41 Any use of restraints shall be as reasonably determined by the officer to be necessary under the
42 circumstances for the safety of the respondent, the law enforcement officer, and other persons.
43 Every effort to avoid restraint of a child under the age of 10 shall be made by the transporting
44 officer unless the child's behavior or other circumstances dictate that restraint is necessary. The
45 law enforcement officer shall respond to all inquiries from the facility concerning the
46 respondent's behavior and the use of any restraints related to the custody and transportation of
47 the respondent, except in circumstances where providing that information is confidential or
48 would otherwise compromise a law enforcement investigation. No law enforcement ~~law~~
49 enforcement officer or other person designated or required to provide custody or transport of a
50 client under G.S. 122C-251 may be held criminally or civilly liable for assault, false

1 imprisonment, or other torts or crimes on account of reasonable measures taken under the
2 authority of this Article.

3 (f) Notwithstanding the provisions of subsections (a), (b), and (c) of this section, a clerk,
4 a magistrate, or a district court judge, where applicable, may authorize the family or immediate
5 friends of the respondent, if they so request, to transport the respondent in accordance with the
6 procedures of this Article. This authorization shall only be granted in cases where the danger to
7 the public, the family or friends of the respondent, or the respondent himself or herself is not
8 substantial. The family or immediate friends of the respondent shall bear the costs of providing
9 this transportation.

10 (g) The governing body of a city or county ~~may~~ shall adopt a plan known as an
11 "involuntary commitment transportation agreement" or "transportation agreement" for the
12 custody and transportation of respondents in involuntary commitment proceedings in ~~under~~ this
13 Article. Law enforcement personnel, Article as follows:

14 (1) Law enforcement and other affected agencies, including local acute care
15 hospitals and other mental health providers, shall participate in developing the
16 transportation agreement. The area authority may participate in developing
17 the transportation agreement.

18 (2) The transportation agreement may designate law enforcement officers,
19 volunteers, or other public or private agency personnel ~~may be designated who~~
20 have agreed pursuant to subsection (g) of this section to provide all or parts of
21 the custody and transportation required by involuntary commitment
22 proceedings. Persons so designated or otherwise required to provide all or
23 parts of the custody and transportation required by involuntary commitment
24 proceedings shall be trained as set forth in G.S. 122C-202.2(a)(3), and the plan
25 shall assure adequate safety and protections for both the public and the
26 respondent. Law enforcement, other affected agencies, and the area authority
27 shall participate in the planning. If any person other than a law enforcement
28 agency is designated by a city or county, the person so designated shall
29 provide the transportation and ~~Any person or agency designated or required~~
30 to provide all or parts of the custody and transportation required by
31 involuntary commitment proceedings shall follow the procedures in this
32 Article. References in this Article to a law enforcement ~~law enforcement~~
33 officer apply to this person ~~any person or entity designated to provide custody~~
34 or transportation. The transportation agreement may provide that private
35 personnel or agencies may contract for transportation services to transport
36 respondents under involuntary commitment from one entity to another.

37 (3) A person shall not be designated under subsection (g) of this section without
38 that person's written consent and the written consent of his or her employer, if
39 applicable. An agency, corporation, or entity shall not be designated without
40 the written consent of that agency, corporation, or entity. Any person, agency,
41 corporation, or other entity shall be designated to provide only the services
42 which the person, agency, corporation, or other entity has previously
43 consented in writing to provide and shall be permitted to withdraw from or
44 discontinue providing services, in whole or in part, upon written notice to the
45 designating governing body. The transportation agreement shall be submitted
46 to the magistrates in the city or county's judicial district, to the county clerks
47 of court, to the LME/MCO that serves the city or county, and to the Division
48 of Mental Health, Developmental Disabilities, and Substance Abuse Services
49 on or before January 1, 2019. If the city or county modifies the transportation
50 agreement, it will submit the modified agreement to their magistrates in their
51 judicial district, county clerks of court, the LME/MCO that serves the city or

1 county, and the Division of Mental Health, Developmental Disabilities, and
 2 Substance Abuse Services at least 10 days prior to the effective date of the
 3 new plan.

4 (4) Counties and cities shall retain and be required to perform the responsibilities
 5 set forth in this Article, except as set forth in a plan developed, agreed upon,
 6 and adopted in compliance with this subsection.

7 (h) ~~The cost and expenses of transporting of custody and transportation of a respondent~~
 8 ~~to or from a 24-hour facility is as required by the involuntary commitment procedures of this~~
 9 Article, to the extent they are not reimbursed by a third-party insurer, are the responsibility of the
 10 county of residence of the respondent, to the extent they are not reimbursed by a
 11 third-party insurer. The State (when providing transportation under G.S. 122C-408(b)), a city, or
 12 a county is entitled to recover the reasonable cost of transportation from the county of residence
 13 of the respondent. The county of residence of the respondent shall reimburse the State, another
 14 county, or a city the reasonable transportation costs incurred as authorized by this subsection.
 15 The county of residence of the respondent is entitled to recover the reasonable cost of
 16 transportation it has paid to the State, a city, or a county. Provided that the county of residence
 17 provides the respondent or other individual liable for the respondent's support a reasonable notice
 18 and opportunity to object to the reimbursement, the county of residence of the respondent may
 19 recover that cost from:

- 20 (1) The respondent, if the respondent is not indigent;
 21 (2) Any person or entity that is legally liable for the resident's support and
 22 maintenance provided there is sufficient property to pay the cost;
 23 (3) Any person or entity that is contractually responsible for the cost; or
 24 (4) Any person or entity that otherwise is liable under federal, State, or local law
 25 for the cost."

26 **SECTION 20.** G.S. 122C-253 reads as rewritten:

27 **"§ 122C-253. Fees under commitment order.**

28 Nothing contained in Parts 6, 7, or 8 of this Article requires a private physician, private
 29 psychologist, commitment examiner, or private facility to accept a respondent as a client either
 30 before or after commitment. Treatment at a private facility or by a private ~~physician or private~~
 31 ~~psychologist~~ physician, psychologist, or commitment examiner is at the expense of the
 32 respondent to the extent that the charges are not disposed of by contract between the area
 33 authority and the private facility. An area authority and its contract agencies shall set and recover
 34 fees for inpatient or outpatient treatment services provided under a commitment order in
 35 accordance with G.S. 122C-146."

36 **SECTION 21.** G.S. 122C-255 reads as rewritten:

37 **"§ 122C-255. Report required.**

38 ~~Beginning January 1, 2012, each~~ Each 24-hour ~~residential~~ facility that (i) falls under the
 39 category of nonhospital medical detoxification, facility-based crisis service, or inpatient hospital
 40 treatment, (ii) is not a State facility under the jurisdiction of the Secretary of Health and Human
 41 Services, and (iii) is designated by the Secretary of Health and Human Services as a facility for
 42 the custody and treatment of individuals under a petition of involuntary commitment pursuant to
 43 G.S. 122C-252 and 10A NCAC 26C .0101 shall submit a written report on involuntary
 44 commitments each January 1 and each July 1 to the Department of Health and Human Services,
 45 Division of Mental Health, Developmental Disabilities, and Substance Abuse Services. The
 46 report shall include all of the following:

- 47 (1) The number and primary presenting conditions of individuals receiving
 48 treatment from the facility under a petition of involuntary commitment.
 49 (2) The number of individuals for whom an involuntary commitment proceeding
 50 was initiated at the facility, who were referred to a different facility or
 51 program.

- 1 (3) The reason for referring the individuals described in subdivision (2) of this
2 section to a different facility or program, including the need for more intensive
3 medical supervision."

4 **SECTION 22.** G.S. 122C-261 reads as rewritten:

5 **"§ 122C-261. Affidavit and petition before clerk or magistrate when immediate**
6 **hospitalization is not necessary; custody order.**

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

18 (b) If the clerk or magistrate finds reasonable grounds to believe that the facts alleged in
19 the affidavit are true and that the respondent is probably mentally ill and either (i) dangerous to
20 self, as defined in G.S. 122C-3(11)a., or dangerous to others, as defined in G.S. 122C-3(11)b., or
21 (ii) in need of treatment in order to prevent further disability or deterioration that would
22 predictably result in dangerousness, the clerk or magistrate shall issue an order to a law
23 enforcement officer or any other designated person ~~authorized~~ under G.S. 122C-251
24 G.S. 122C-251(g) to take the respondent into custody for examination by a ~~physician or eligible~~
25 ~~psychologist~~ commitment examiner. If the clerk or magistrate finds that, in addition to probably
26 being mentally ill, the respondent is also probably mentally retarded, the clerk or magistrate shall
27 contact the area authority before issuing a custody order and the area authority shall designate
28 the facility to which the respondent is to be taken for examination by a ~~physician or eligible~~
29 ~~psychologist~~ commitment examiner. The clerk or magistrate shall provide the petitioner and the
30 respondent, if present, with specific information regarding the next steps that will occur for the
31 respondent.

32 (c) If the clerk or magistrate issues a custody order, the clerk or magistrate shall also
33 make inquiry in any reliable way as to whether the respondent is indigent within the meaning of
34 G.S. 7A-450. A magistrate shall report the result of this inquiry to the clerk.

35 (d) If the affiant is a ~~physician or eligible psychologist~~ commitment examiner, all of the
36 following apply:

- 37 (1) ~~The~~ If the affiant has examined the respondent, the affiant may execute the
38 affidavit before any official authorized to administer oaths. This affiant is not
39 required to appear before the clerk or magistrate for this purpose. This affiant
40 shall file the affidavit with the clerk or magistrate by delivering to the clerk or
41 magistrate the original ~~affidavit or~~ affidavit, by transmitting a copy in paper
42 form that is printed through the facsimile transmission of the
43 ~~affidavit.~~ affidavit, or by delivering the affidavit through electronic
44 transmission. If the affidavit is filed through electronic or facsimile
45 transmission, the affiant shall mail the original affidavit no later than five days
46 after the facsimile transmission of the affidavit to the clerk or magistrate to be
47 filed by the clerk or magistrate with the facsimile copy of the affidavit.
- 48 (2) This affiant's examination shall comply with the requirements of the initial
49 examination as provided in G.S. 122C-263(c). The affiant shall document in
50 writing and file the examination findings with the affidavit delivered to the

- 1 clerk or magistrate in accordance with subdivision (1) of subsection (d) of this
2 section.
- 3 (3) If the ~~physician or eligible psychologist~~ commitment examiner recommends
4 outpatient commitment according to the criteria for outpatient commitment
5 set forth in G.S. 122C-263(d)(1) and the clerk or magistrate finds probable
6 cause to believe that the respondent meets the criteria for outpatient
7 commitment, the clerk or magistrate shall issue an order that a hearing before
8 a district court judge be held to determine whether the respondent will be
9 involuntarily committed. ~~The physician or eligible psychologist shall provide~~
10 ~~the respondent with written notice of any scheduled appointment and the~~
11 ~~name, address, and telephone number of the proposed outpatient treatment~~
12 ~~physician or center. The physician or eligible psychologist~~ The commitment
13 examiner shall contact the ~~local management entity~~ LME/MCO that serves
14 the county where the respondent resides or the ~~local management entity~~
15 LME/MCO that coordinated services for the respondent to inform the ~~local~~
16 management entity LME/MCO that the respondent has been scheduled for an
17 appointment with an outpatient treatment physician or center. The
18 commitment examiner shall provide the respondent with written notice of any
19 scheduled appointment and the name, address, and telephone number of the
20 proposed outpatient treatment physician or center.
- 21 (4) If the ~~physician or eligible psychologist~~ commitment examiner recommends
22 inpatient commitment based on the criteria for inpatient commitment set forth
23 in G.S. 122C-263(d)(2) and the clerk or magistrate finds probable cause to
24 believe that the respondent meets the criteria for inpatient commitment, the
25 clerk or magistrate shall issue an order to a law enforcement officer to take
26 the respondent into custody for transportation to ~~or custody at~~ a 24-hour
27 facility described in G.S. 122C-252, provided that if a 24-hour facility is not
28 immediately available or appropriate to the respondent's medical condition,
29 the respondent may be temporarily detained under appropriate supervision
30 and, upon further examination, released in accordance with
31 G.S. 122C-263(d)(2).
- 32 ...
- 33 (7) If a ~~physician or eligible psychologist~~ commitment examiner executes an
34 affidavit for inpatient commitment of a respondent, a ~~second~~ physician who is
35 not the commitment examiner who performed the examination under this
36 section shall be required to perform the examination required by
37 G.S. 122C-266.
- 38 (8) No commitment examiner, area facility, acute care hospital, general hospital,
39 or other site of first examination, or its officials, staff, employees, or other
40 individuals responsible for the custody, examination, detention, management,
41 supervision, treatment, or release of an individual examined for commitment,
42 who is not grossly negligent, shall be held liable in any civil or criminal action
43 for taking measures prior to the inpatient admission of the individual to a
44 24-hour facility.
- 45 (e) Except as provided in subdivision (5) of subsection (d) of this section, upon receipt
46 of the custody order of the clerk or magistrate or a custody order issued by the court pursuant to
47 G.S. 15A-1003, a law enforcement ~~officer or other officer,~~ person designated under
48 G.S. 122C-251(g), or other person identified in the order shall take the respondent into custody
49 within 24 hours after the order is signed, and proceed according to G.S. 122C-263. The custody
50 order is valid throughout the State.

1 (f) ~~When a petition is filed for an individual who is a resident of a single portal area, the~~
2 ~~procedures for examination by a physician or eligible psychologist as set forth in G.S. 122C-263~~
3 ~~shall be carried out in accordance with the area plan. Prior to issuance of a custody order for a~~
4 ~~respondent who resides in an area authority with a single portal plan, the clerk or magistrate shall~~
5 ~~communicate with the area authority to determine the appropriate 24-hour facility to which the~~
6 ~~respondent should be admitted according to the area plan or to determine if there are more~~
7 ~~appropriate resources available through the area authority to assist the petitioner or the~~
8 ~~respondent. When an individual from a single portal area is presented for commitment at a~~
9 ~~24-hour area or State facility directly, the individual may not be accepted for admission until the~~
10 ~~facility notifies the area authority and the area authority agrees to the admission. If the area~~
11 ~~authority does not agree to the admission, it shall determine the appropriate 24-hour facility to~~
12 ~~which the individual should be admitted according to the area plan or determine if there are more~~
13 ~~appropriate resources available through the area authority to assist the individual. If the area~~
14 ~~authority agrees to the admission, further planning of treatment for the client is the joint~~
15 ~~responsibility of the area authority and the facility as prescribed in the area plan.~~

16 Notwithstanding the provisions of this section, in no event shall an individual known or
17 reasonably believed to be mentally retarded be admitted to a State psychiatric hospital, except as
18 follows:

- 19 (1) Persons described in G.S. 122C-266(b);
- 20 (2) Persons admitted pursuant to G.S. 15A-1321;
- 21 (3) Respondents who are so extremely dangerous as to pose a serious threat to the
22 community and to other patients committed to non-State hospital psychiatric
23 inpatient units, as determined by the Director of the Division of Mental
24 Health, Developmental Disabilities, and Substance Abuse Services or his
25 designee; and
- 26 (4) Respondents who are so gravely disabled by both multiple disorders and
27 medical fragility or multiple disorders and deafness that alternative care is
28 inappropriate, as determined by the Director of the Division of Mental Health,
29 Developmental Disabilities, and Substance Abuse Services or his designee.

30 Individuals transported to a State facility for the mentally ill who are not admitted by the
31 facility may be transported by appropriate law enforcement officers or designated staff of the
32 State facility in State-owned vehicles to an appropriate 24-hour facility that provides psychiatric
33 inpatient care.

34 No later than 24 hours after the transfer, the responsible professional at the original facility
35 shall notify the petitioner, the clerk of court, and, if consent is granted by the respondent, the next
36 of kin, that the transfer has been completed."

37 **SECTION 23.** G.S. 122C-262 reads as rewritten:

38 "**§ 122C-262. Special emergency procedure for individuals needing immediate**
39 **hospitalization.**

40 (a) Anyone, including a law enforcement officer, who has knowledge of an individual
41 who is subject to inpatient commitment according to the criteria of ~~G.S. 122C-261(a)~~
42 G.S. 122C-263(d)(2) and who requires immediate hospitalization to prevent harm to self or
43 others, may transport the individual directly to an area facility or other place, including a State
44 facility for the mentally ill, for examination by a ~~physician or eligible psychologist~~ commitment
45 examiner in accordance with G.S. 122C-263(c).

46 (b) Upon examination by the ~~physician or eligible psychologist, commitment examiner,~~
47 if the individual meets the inpatient commitment criteria required specified in G.S. 122C-261(a),
48 the physician or eligible psychologist G.S. 122C-263(d)(2) and requires immediate
49 hospitalization to prevent harm to self or others, the commitment examiner shall so certify in
50 writing before any official authorized to administer oaths. The certificate shall also state the
51 reason that the individual requires immediate hospitalization. If the ~~physician or eligible~~

1 ~~psychologist commitment examiner~~ knows or has reason to believe that the individual is mentally
2 retarded, the certificate shall so state.

3 (c) If the ~~physician or eligible psychologist commitment examiner~~ executes the oath,
4 appearance before a magistrate shall be waived. The ~~physician or eligible psychologist~~
5 ~~commitment examiner~~ shall send a copy of the certificate to the clerk of superior court by the
6 most reliable and expeditious means. If it cannot be reasonably anticipated that the clerk will
7 receive the copy within 24 hours, excluding Saturday, Sunday, and holidays, of the time that it
8 was signed, the physician or eligible psychologist shall also communicate the findings to the
9 clerk by telephone.

10 (d) Anyone, including a law enforcement officer if necessary, may transport the
11 individual to a 24-hour facility described in G.S. 122C-252 for examination and treatment
12 pending a district court hearing. If there is no area 24-hour facility and if the respondent is
13 indigent and unable to pay for care at a private 24-hour facility, the law enforcement officer or
14 other designated person providing transportation shall take the respondent to a State facility for
15 the mentally ill designated by the Commission in accordance with G.S. 143B-147(a)(1)a and
16 immediately notify the clerk of superior court of this action. The ~~physician's or eligible~~
17 ~~psychologist's commitment examiner's~~ certificate shall serve as the custody order and the law
18 enforcement officer or other designated person shall provide transportation in accordance with
19 the provisions of G.S. 122C-251. If a 24-hour facility is not immediately available or appropriate
20 to the respondent's medical condition, the respondent may be temporarily detained under
21 appropriate supervision in accordance with G.S. 122C-263(d)(2) and released in accordance with
22 G.S. 122C-263(d)(2).

23 In the event an individual known or reasonably believed to be mentally retarded is transported
24 to a State facility for the mentally ill, in no event shall that individual be admitted to that facility
25 except as follows:

- 26 (1) Persons described in G.S. 122C-266(b);
- 27 (2) Persons admitted pursuant to G.S. 15A-1321;
- 28 (3) Respondents who are so extremely dangerous as to pose a serious threat to the
29 community and to other patients committed to non-State hospital psychiatric
30 inpatient units, as determined by the Director of the Division of Mental
31 Health, Developmental Disabilities, and Substance Abuse Services or his
32 designee; and
- 33 (4) Respondents who are so gravely disabled by both multiple disorders and
34 medical fragility or multiple disorders and deafness that alternative care is
35 inappropriate, as determined by the Director of the Division of Mental Health,
36 Developmental Disabilities, and Substance Abuse Services or his designee.

37 Individuals transported to a State facility for the mentally ill who are not admitted by the
38 facility may be transported by law enforcement officers or designated staff of the State facility
39 in State-owned vehicles to an appropriate 24-hour facility that provides psychiatric inpatient care.

40 No later than 24 hours after the transfer, the responsible professional at the original facility
41 shall notify the petitioner, the clerk of court, and, if consent is granted by the respondent, the next
42 of kin, that the transfer has been completed.

43 ...

44 (f) If, upon examination of a respondent presented in accordance with subsection (a) of
45 this section, the commitment examiner finds that the individual meets the criteria for inpatient
46 commitment specified in G.S. 122C-263(d)(2) but does not require immediate hospitalization to
47 prevent harm to self or others, the commitment examiner may petition the clerk or magistrate in
48 accordance with G.S. 122C-261(d) for an order to take the individual into custody for transport
49 to a 24-hour facility described in G.S. 122C-252. If the commitment examiner recommends
50 inpatient commitment and the clerk or magistrate finds probable cause to believe that the
51 respondent meets the criteria for inpatient commitment, the clerk or magistrate shall issue an

1 order for transport to or custody at a 24-hour facility described in G.S. 122C-252; provided,
2 however, that if a 24-hour facility is not immediately available or appropriate to the respondent's
3 medical condition, the respondent may be temporarily detained under appropriate supervision in
4 accordance with G.S. 122C-263(d)(2) and released in accordance with G.S. 122C-263(d)(2).

5 (g) This section applies exclusively to an individual who is transported to an area facility
6 or other place for an examination by a commitment examiner in accordance with subsection (a)
7 of this section."

8 **SECTION 24.** G.S. 122C-263 reads as rewritten:

9 **"§ 122C-263. Duties of ~~law enforcement~~ law enforcement officer; first examination by**
10 **physician or eligible psychologist examination.**

11 (a) Without unnecessary delay after assuming custody, the law enforcement officer or
12 the individual designated ~~by the clerk or magistrate under G.S. 122C-251(g)~~ required to provide
13 transportation pursuant to G.S. 122C-251(g) shall take the respondent to an area facility for
14 examination by a physician or eligible psychologist; if a physician or eligible psychologist or
15 other location identified by the LME/MCO in the community crisis services plan adopted
16 pursuant to G.S. 122C-202.2 that has an available commitment examiner and is capable of
17 performing a first examination in conjunction with a health screening at the same location, unless
18 exigent circumstances require the respondent be transported to an emergency department. If a
19 commitment examiner is not available in the area facility, available, whether on-site, on-call, or
20 via telemedicine, at any facility or location, or if a plan has not been adopted, the person
21 designated to provide transportation shall take the respondent to an alternative non-hospital
22 provider or facility-based crisis center for a first examination in conjunction with a health
23 screening at the same location. If no non-hospital provider or facility-based crisis center for a
24 first examination in conjunction with a health screening at the same location for health screening
25 and first examination exists, the person designated to provide transportation shall take the
26 respondent to any physician or eligible psychologist locally available a private hospital or clinic,
27 a general hospital, an acute care hospital, or a State facility for the mentally ill. If a physician or
28 eligible psychologist commitment examiner is not immediately available available, the
29 respondent may be temporarily detained in an area facility, if one is available; if an area facility
30 is not available, the respondent may be detained under appropriate supervision in the respondent's
31 home, in a private hospital or a clinic, in a general hospital, or in a State facility for the mentally
32 ill, but not in a jail or other penal facility. For the purposes of this section, "non-hospital provider"
33 means an outpatient provider that provides either behavioral health or medical services.

34 (a1) A facility or other location to which a respondent is transported under subsection (a)
35 of this section shall provide a health screening of the respondent. The health screening shall be
36 conducted by a commitment examiner or other individual who is determined by the area facility,
37 contracted facility, or other location to be qualified to perform the health screening. The
38 Department will work with commitment examiner professionals to develop a screening tool for
39 this purpose. The respondent may either be in the physical face-to-face presence of the person
40 conducting the screen or may be examined utilizing telemedicine equipment and procedures.
41 Documentation of the health screening required under this subsection that is completed prior to
42 transporting the patient to any general hospital, acute care hospital, or designated facility shall
43 accompany the patient or otherwise be made available at the time of transportation to the
44 receiving facility.

45 (b) The examination set forth in subsection (a) of this section is not required if under any
46 of the following circumstances:

47 (1) The affiant who obtained the custody order is a physician or eligible
48 psychologist commitment examiner who recommends inpatient
49 commitment; commitment.

1 (2) The custody order states that the respondent was charged with a violent crime,
2 including a crime involving assault with a deadly weapon, and ~~he~~the
3 respondent was found incapable of ~~proceeding; or~~proceeding.

4 (3) Repealed by Session Laws 1987, c. 596, s. 3.

5 In any of these cases, the ~~law enforcement~~law enforcement officer or person designated under
6 G.S. 122C-251(g) shall take the respondent directly to a 24-hour facility described in
7 G.S. 122C-252.

8 (c) The ~~physician or eligible psychologist~~commitment examiner described in subsection
9 (a) of this section shall examine the respondent as soon as possible, and in any event within 24
10 ~~hours,~~hours after the respondent is presented for examination. When the examination set forth in
11 subsection (a) of this section is performed by a ~~physician or eligible psychologist~~commitment
12 examiner, the respondent may either be in the physical face-to-face presence of the ~~physician or~~
13 ~~eligible psychologist~~commitment examiner or may be examined utilizing telemedicine
14 equipment and procedures. A ~~physician or eligible psychologist~~commitment examiner who
15 examines a respondent by means of telemedicine must be satisfied to a reasonable medical
16 certainty that the determinations made in accordance with subsection (d) of this section would
17 not be different if the examination had been done in the physical presence of the ~~physician or~~
18 ~~eligible psychologist~~. A ~~physician or eligible psychologist~~commitment examiner. A
19 commitment examiner who is not so satisfied must note that the examination was not
20 satisfactorily accomplished, and the respondent must be taken for a face-to-face examination in
21 the physical presence of a person authorized to perform examinations under this section. As used
22 in this ~~subsection,~~section, "telemedicine" is the use of two-way real-time interactive audio and
23 video between places of lesser and greater medical capability or expertise to provide and support
24 health care when distance separates participants who are in different geographical locations. A
25 recipient is referred by one provider to receive the services of another provider via telemedicine.

26 The examination shall include ~~but is not limited to~~an assessment of the respondent's; at least
27 all of the following with respect to the respondent.

28 (1) Current and previous mental illness and mental retardation including, if
29 available, previous treatment ~~history;~~history.

30 (2) Dangerousness to self, as defined in G.S. 122C-3(11)a. or others, as defined
31 in ~~G.S. 122C-3(11)b.;~~G.S. 122C-3(11)b.

32 (3) Ability to survive safely without inpatient commitment, including the
33 availability of supervision from family, friends or ~~others;~~and others.

34 (4) Capacity to make an informed decision concerning treatment.

35 (d) After the conclusion of the examination the ~~physician or eligible psychologist~~
36 commitment examiner shall make the following determinations:

37 (1) If the ~~physician or eligible psychologist~~commitment examiner finds ~~that;~~all
38 of the following:

39 a. The respondent is mentally ~~ill;~~ill.

40 b. The respondent is capable of surviving safely in the community with
41 available supervision from family, friends, or ~~others;~~others.

42 c. Based on the respondent's psychiatric history, the respondent is in need
43 of treatment in order to prevent further disability or deterioration that
44 would predictably result in dangerousness as defined by ~~G.S.~~
45 ~~122C-3(11); and~~G.S. 122C-3(11).

46 d. The respondent's current mental status or the nature of the respondent's
47 illness limits or negates the respondent's ability to make an informed
48 decision to seek voluntarily or comply with recommended treatment.

49 The ~~physician or eligible psychologist~~commitment examiner shall so show
50 on the examination report and shall recommend outpatient commitment. In
51 addition the ~~examining physician or eligible psychologist~~commitment

1 examiner shall show the name, address, and telephone number of the proposed
2 outpatient treatment physician or ~~center~~center in accordance with subsection
3 (f) of this section. The person designated in the order to provide transportation
4 shall return the respondent to the respondent's regular residence or, with the
5 respondent's consent, to the home of a consenting individual located in the
6 originating county, and the respondent shall be released from custody.

- 7 (2) If the ~~physician or eligible psychologist~~commitment examiner finds that the
8 respondent is mentally ill and is dangerous to self, as defined in
9 G.S. 122C-3(11)a., or others, as defined in G.S. 122C-3(11)b., the ~~physician~~
10 ~~or eligible psychologist~~commitment examiner shall recommend inpatient
11 commitment, and shall so show on the examination report. If, in addition to
12 mental illness and dangerousness, the ~~physician or eligible psychologist~~
13 commitment examiner also finds that the respondent is known or reasonably
14 believed to be mentally retarded, this finding shall be shown on the report.
15 ~~The~~Upon notification, the law enforcement officer or other designated person
16 shall take the respondent to a 24-hour facility described in G.S. 122C-252
17 pending a district court hearing. To the extent feasible, in providing the
18 transportation of the respondent, the law enforcement officer shall act within
19 six hours of notification. The other designated person shall take the respondent
20 to a 24-hour facility described in G.S. 122C-252 pending a district court
21 hearing within six hours of notification. If there is no area 24-hour facility and
22 if the respondent is indigent and unable to pay for care at a private 24-hour
23 facility, the law enforcement officer or other designated person shall take the
24 respondent to a State facility for the mentally ill designated by the
25 Commission in accordance with G.S. 143B-147(a)(1)a. for custody,
26 observation, and treatment and immediately notify the clerk of superior court
27 of this action. If a 24-hour facility is not immediately available or appropriate
28 to the respondent's medical condition, the respondent may be temporarily
29 detained under appropriate supervision at the site of the first
30 ~~examination, provided that at any time that a physician or eligible psychologist~~
31 examination. Upon the commitment examiner's determination that a 24-hour
32 facility is available and medically appropriate, the law enforcement officer or
33 other designated person shall transport the respondent after receiving a request
34 for transportation by the facility of the commitment examiner. To the extent
35 feasible, in providing the transportation of the respondent, the law
36 enforcement officer shall act within six hours of notification. The other
37 designated person shall transport the respondent without unnecessary delay
38 and within six hours after receiving a request for transportation by the facility
39 of the commitment examiner. At any time during the respondent's temporary
40 detention under appropriate supervision, if a commitment examiner
41 determines that the respondent is no longer in need of inpatient commitment,
42 the proceedings shall be terminated and the respondent transported and
43 released in accordance with subdivision (3) of this subsection. However, if the
44 ~~physician or eligible psychologist~~commitment examiner determines that the
45 respondent meets the criteria for outpatient commitment, as defined in
46 subdivision (1) of this subsection, the ~~physician or eligible psychologist~~
47 commitment examiner may recommend outpatient commitment, and the
48 respondent shall be transported and released in accordance with subdivision
49 (1) of this subsection. Any decision to terminate the proceedings or to
50 recommend outpatient commitment after an initial recommendation of
51 inpatient commitment shall be documented and reported to the clerk of

1 superior court in accordance with subsection (e) of this section. If the
2 respondent is temporarily detained and a 24-hour facility is not available or
3 medically appropriate seven days after the issuance of the custody order, a
4 ~~physician or psychologist~~ commitment examiner shall report this fact to the
5 clerk of superior court and the proceedings shall be terminated. Termination
6 of proceedings pursuant to this subdivision shall not prohibit or prevent the
7 initiation of new involuntary commitment proceedings when appropriate. A
8 commitment examiner may initiate a new involuntary commitment
9 proceeding prior to the expiration of this seven-day period, as long as the
10 respondent continues to meet applicable criteria. Affidavits filed in support of
11 proceedings terminated pursuant to this subdivision may not be submitted in
12 support of any subsequent petitions for involuntary commitment. If the affiant
13 initiating new commitment proceedings is a ~~physician or eligible~~
14 ~~psychologist~~, commitment examiner, the affiant shall conduct a new
15 examination and may not rely upon examinations conducted as part of
16 proceedings terminated pursuant to this subdivision.

17 In the event an individual known or reasonably believed to be mentally
18 retarded is transported to a State facility for the mentally ill, in no event shall
19 that individual be admitted to that facility except as follows:

- 20 a. Persons described in G.S. 122C-266(b);
- 21 b. Persons admitted pursuant to G.S. 15A-1321;
- 22 c. Respondents who are so extremely dangerous as to pose a serious
23 threat to the community and to other patients committed to non-State
24 hospital psychiatric inpatient units, as determined by the Director of
25 the Division of Mental Health, Developmental Disabilities, and
26 Substance Abuse Services or his designee; and
- 27 d. Respondents who are so gravely disabled by both multiple disorders
28 and medical fragility or multiple disorders and deafness that
29 alternative care is inappropriate, as determined by the Director of the
30 Division of Mental Health, Developmental Disabilities, and Substance
31 Abuse Services or his designee.

32 Individuals transported to a State facility for the mentally ill who are not
33 admitted by the facility may be transported by law enforcement officers or
34 designated staff of the State facility in State-owned vehicles to an appropriate
35 24-hour facility that provides psychiatric inpatient care.

36 No later than 24 hours after the transfer, the responsible professional at the
37 original facility shall notify the petitioner, the clerk of court, and, if consent is
38 granted by the respondent, the next of kin, that the transfer has been
39 completed.

- 40 (3) If the ~~physician or eligible psychologist~~ commitment examiner finds that
41 neither condition described in subdivisions (1) or (2) of this subsection exists,
42 the proceedings shall be terminated. The person designated in the order to
43 provide transportation shall return the respondent to the respondent's regular
44 residence or, with the respondent's consent, to the home of a consenting
45 individual located in the originating county and the respondent shall be
46 released from custody.

47 (e) The findings of the ~~physician or eligible psychologist~~ commitment examiner and the
48 facts on which they are based shall be in writing in all cases. The ~~physician or eligible~~
49 ~~psychologist~~ commitment examiner shall send a copy of the findings to the clerk of superior court
50 by the most reliable and expeditious means. If it cannot be reasonably anticipated that the clerk

1 will receive the copy within 48 hours of the time that it was signed, the physician or eligible
2 psychologist shall also communicate his findings to the clerk by telephone.

3 (f) ~~When outpatient commitment is recommended, the examining physician or eligible~~
4 ~~psychologist, commitment examiner, if different from the proposed outpatient treatment~~
5 ~~physician or center, shall give the respondent a written notice listing the name, address, and~~
6 ~~telephone number of the proposed outpatient treatment physician or center and directing the~~
7 ~~respondent to appear at the address at a specified date and time. The examining physician or~~
8 ~~eligible psychologist before the appointment shall notify by telephone the designated outpatient~~
9 ~~treatment physician or center and shall send a copy of the notice and his examination report to~~
10 ~~the physician or center. shall contact the LME/MCO that serves the county where the respondent~~
11 ~~resides or the LME/MCO that coordinated services for the respondent to inform the LME/MCO~~
12 ~~that the respondent is being recommended for outpatient commitment. The commitment~~
13 ~~examiner shall give the respondent a written notice listing the name, address, and telephone~~
14 ~~number of the proposed outpatient treatment physician or center.~~

15 (g) ~~The physician or eligible psychologist, commitment examiner, at the completion of~~
16 ~~the examination, shall provide the respondent with specific information regarding the next steps~~
17 ~~that will occur."~~

18 **SECTION 25.** G.S. 122C-263.1 reads as rewritten:

19 "**§ 122C-263.1. Secretary's authority to waive requirement of first examination by**
20 **physician or eligible psychologist; certify commitment examiners; training of**
21 **certified providers—commitment examiners performing first**
22 **examinations; examinations; LME/MCO responsibilities.**

23 (a) Physicians and eligible psychologists are qualified to perform the commitment
24 examinations required under G.S. 122C-263(c) and G.S. 122C-283(c). The Secretary of Health
25 and Human Services may, upon request of an LME, waive the requirements of G.S. 122C-261
26 through G.S. 122C-263 and G.S. 122C-281 through G.S. 122C-283 pertaining to initial
27 (first-level) examinations by a physician or eligible psychologist of individuals meeting the
28 criteria of G.S. 122C-261(a) or G.S. 122C-281(a), as applicable, as follows: may individually
29 certify to perform the first commitment examinations required by G.S. 122C-261 through
30 G.S. 122C-263 and G.S. 122C-281 through G.S. 122C-283 other health, mental health, and
31 substance abuse professionals whose scope of practice includes diagnosing and documenting
32 psychiatric or substance use disorders and conducting mental status examinations to determine
33 capacity to give informed consent to treatment as follows:

34 (1) ~~The Secretary has received a request from an LME to substitute for a physician~~
35 ~~or eligible psychologist, a licensed clinical social worker, a master's level~~
36 ~~psychiatric nurse, or a master's level certified clinical addictions specialist in~~
37 ~~accordance with subdivision (8) of this subsection to conduct the initial~~
38 ~~(first-level) examinations of individuals meeting the criteria of G.S.~~
39 ~~122C-261(a) or G.S. 122C-281(a). In making this type of request, the LME~~
40 ~~shall specifically describe all of the following: request:~~

41 a. ~~How the purpose of the statutory requirement would be better served~~
42 ~~by waiving the requirement and substituting the proposed change~~
43 ~~under the waiver. To certify a licensed clinical social worker, a master's~~
44 ~~or higher level degree nurse practitioner, a licensed professional~~
45 ~~counsellor, or a physician's assistant to conduct the first examinations~~
46 ~~described in G.S. 122C-263(c) and G.S. 122C-283(c).~~

47 b. ~~How the waiver will enable the LME to improve the delivery or~~
48 ~~management of mental health, developmental disabilities, and~~
49 ~~substance abuse services. To certify a master's level licensed clinical~~
50 ~~addictions specialist to conduct the first examination described in~~
51 ~~G.S. 122C-283(c).~~

- 1 e. ~~How the health, safety, and welfare of individuals will continue to be~~
2 ~~at least as well protected under the waiver as under the statutory~~
3 ~~requirement.~~
- 4 (2) The Secretary shall review the request and may approve it upon finding all of
5 the following:
- 6 a. The request meets the requirements of this section.
- 7 b. ~~The request furthers the purposes of State policy under G.S. 122C-2~~
8 ~~and mental health, developmental disabilities, and substance abuse~~
9 ~~services reform.~~
- 10 e. ~~The request improves the delivery of mental health, developmental~~
11 ~~disabilities, and substance abuse services in the counties affected by~~
12 ~~the waiver and also protects the health, safety, and welfare of~~
13 ~~individuals receiving these services.~~
- 14 d. The Department determines that the applicant possesses the
15 professional licensure, registration, or certification to qualify the
16 applicant as a professional whose scope of practice includes
17 diagnosing and documenting psychiatric or substance use disorders
18 and conducting mental status examinations to determine capacity to
19 give informed consent to treatment.
- 20 e. The applicant for certification has successfully completed the
21 Department's standardized training program for involuntary
22 commitment and has successfully passed the examination for that
23 program.
- 24 (3) ~~The Secretary shall evaluate the effectiveness, quality, and efficiency of~~
25 ~~mental health, developmental disabilities, and substance abuse services and~~
26 ~~protection of health, safety, and welfare under the waiver.~~
- 27 (4) A waiver certification granted by the Secretary under this section shall be in
28 effect for a period of up to three years and may be rescinded at any time within
29 this period if the Secretary finds the LME-certified individual has failed to
30 meet the requirements of this section. Certification may be renewed every
31 three years upon completion of a refresher training program approved by the
32 Department.
- 33 (5) In no event shall the ~~substitution certification~~ of a licensed clinical social
34 worker, ~~master's or higher level psychiatric nurse, degree nurse practitioner,~~
35 licensed professional counsellor, physician assistant, or master's level certified
36 clinical addictions specialist ~~under a waiver granted~~ under this section be
37 construed as authorization to expand the scope of practice of the licensed
38 clinical social worker, the master's level ~~psychiatric nurse, nurse practitioner,~~
39 licensed professional counsellor, physician assistant, or the master's level
40 certified clinical addictions specialist.
- 41 (6) The Department shall require that individuals ~~performing~~ certified to perform
42 initial examinations under the waiver this section have successfully completed
43 the Department's standardized involuntary commitment training program and
44 examination. The Department shall maintain a list of these individuals on its
45 Internet Web site.
- 46 (7) ~~As part of its waiver request, the LME shall document the availability of a~~
47 ~~physician to provide backup support.~~
- 48 (7a) No less than annually, the Department shall submit a list of certified first
49 commitment examiners to the Chief District Court Judge of each judicial
50 district in North Carolina and maintain a current list of certified first
51 commitment examiners on its Internet Web site.

1 (8) A master's level ~~certified~~-licensed clinical addiction specialist shall only be
2 authorized to conduct the initial examination of individuals meeting the
3 criteria of G.S. 122C-281(a).

4 (b) ~~The Division of Mental Health, Developmental Disabilities, and Substance Abuse~~
5 ~~Services-Department~~ shall expand its standardized certification training program to include
6 refresher training for all certified providers performing initial examinations pursuant to
7 subsection (a) of this section."

8 **SECTION 26.** G.S. 122C-264 reads as rewritten:

9 **"§ 122C-264. Duties of clerk of superior court and the district attorney.**

10 (a) Upon receipt of a ~~physician's or eligible psychologist's~~ commitment examiner's
11 finding that the respondent meets the criteria of G.S. 122C-263(d)(1) and that outpatient
12 commitment is recommended, the clerk of superior court of the county where the petition was
13 initiated, upon direction of a district court judge, shall calendar the matter for hearing and shall
14 notify the respondent, the proposed outpatient treatment physician or center, and the petitioner
15 of the time and place of the hearing. The petitioner may file a written waiver of his right to notice
16 under this subsection with the clerk of court.

17 (b) Upon receipt by the clerk of superior court pursuant to G.S. 122C-266(c) of a
18 ~~physician's or eligible psychologist's~~ commitment examiner's finding that a respondent meets the
19 criteria of G.S. 122C-263(d)(2) and that inpatient commitment is recommended, the clerk of
20 superior court of the county where the 24-hour facility is located shall, after determination
21 required by G.S. 122C-261(c) and upon direction of a district court judge, assign counsel if
22 necessary, calendar the matter for hearing, and notify the respondent, his counsel, and the
23 petitioner of the time and place of the hearing. The petitioner or respondent, directly or through
24 counsel, may file a written waiver of ~~his~~-the right to notice under this subsection with the clerk
25 of court.

26 (b1) Upon receipt of a ~~physician's or eligible psychologist's~~ commitment examiner's
27 certificate that a respondent meets the criteria of G.S. 122C-261(a) and that immediate
28 hospitalization is needed pursuant to G.S. 122C-262, the clerk of superior court of the county
29 where the treatment facility is located shall submit the certificate to the Chief District Court
30 Judge. The court shall review the certificate within 24 hours, excluding Saturday, Sunday, and
31 holidays, for a finding of reasonable grounds in accordance with [G.S.] 122C-261(b). The clerk
32 shall notify the treatment facility of the court's findings by telephone and shall proceed as set
33 forth in subsections (b), (c), and (f) of this section.

34"

35 **SECTION 27.** G.S. 122C-265 reads as rewritten:

36 **"§ 122C-265. Outpatient commitment; examination and treatment pending hearing.**

37 (a) If a respondent, who has been recommended for outpatient commitment by ~~an~~
38 ~~examining physician or eligible psychologist~~ commitment examiner different from the proposed
39 outpatient treatment physician or center, fails to appear for examination by the proposed
40 outpatient treatment physician or center at the designated time, the physician or center shall notify
41 the clerk of superior court who shall issue an order to a ~~law enforcement~~ law enforcement officer
42 ~~or other person authorized under G.S. 122C-251~~ to take the respondent into custody and take him
43 immediately to the outpatient treatment physician or center for evaluation. The custody order is
44 valid throughout the State. The law-enforcement officer may wait during the examination and
45 return the respondent to his home after the examination.

46 (b) The examining ~~physician~~ commitment examiner or the proposed outpatient treatment
47 physician or center may prescribe to the respondent reasonable and appropriate medication and
48 treatment that are consistent with accepted medical standards pending the district court hearing.

49 (c) In no event may a respondent released on a recommendation that he or she meets the
50 outpatient commitment criteria be physically forced to take medication or ~~forceably~~ forcibly
51 detained for treatment pending a district court hearing.

1 (d) If at any time pending the district court hearing the outpatient treatment physician or
 2 center determines that the respondent does not meet the criteria of G.S. 122C-263(d)(1), ~~he~~the
 3 physician shall release the respondent and notify the clerk of court and the proceedings shall be
 4 terminated.

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

8 (f) If an inpatient commitment proceeding is initiated pending the hearing for outpatient
 9 commitment and the respondent is admitted to a 24-hour facility to be held for an inpatient
 10 commitment hearing, notice shall be sent by the clerk of court in the county where the respondent
 11 is being held to the clerk of court of the county where the outpatient commitment was initiated
 12 and the outpatient commitment proceeding shall be terminated."

13 **SECTION 28.** G.S. 122C-267 reads as rewritten:

14 "**§ 122C-267. Outpatient commitment; district court hearing.**

15 ...

16 (c) Certified copies of reports and findings of ~~physicians and psychologists~~ commitment
 17 examiners and medical records of previous and current treatment are admissible in evidence.

18"

19 **SECTION 29.** G.S. 122C-268 reads as rewritten:

20 "**§ 122C-268. Inpatient commitment; district court hearing.**

21 (a) A hearing shall be held in district court within 10 days of the day the respondent is
 22 taken into law enforcement custody pursuant to G.S. 122C-261(e) or G.S. 122C-262. If a
 23 respondent temporarily detained under G.S. 122C-263(d)(2) is subject to a series of successive
 24 custody orders issued pursuant to G.S. 122C-263(d)(2), the hearing shall be held within 10 days
 25 after the day that the respondent is taken into custody under the most recent custody order. A
 26 continuance of not more than five days may be granted upon motion of of any of the following:

27 (1) ~~The court;~~court.

28 (2) Respondent's ~~counsel;~~or counsel.

29 (3) The State, sufficiently in advance to avoid movement of the respondent.

30 ...

31 (f) Certified copies of reports and findings of ~~physicians and psychologists~~ commitment
 32 examiners and previous and current medical records are admissible in evidence, but the
 33 respondent's right to confront and cross-examine witnesses may not be denied.

34 (g) ~~Hearings may~~ To the extent feasible, hearings shall be held in an appropriate room
 35 not used for treatment of clients at the facility in which the respondent is being treated if it in a
 36 manner approved by the chief district court judge if the facility is located within the presiding
 37 judge's district court district as defined in G.S. 7A-133, by audio and video transmission between
 38 a treatment facility and a courtroom in which the judge and the respondent can see and hear each
 39 other, or G.S. 7A-133. Hearings may be held in the judge's chambers. A hearing may not be held
 40 in a regular courtroom, over objection of the respondent, if in the discretion of a judge a more
 41 suitable place is available. A hearing may be held by audio and video transmission between the
 42 treatment facility and a courtroom in a manner that allows (i) the judge and the respondent to see
 43 and hear each other and (ii) the respondent to communicate fully and confidentially with the
 44 respondent's counsel during the proceeding. Prior to any hearing held by audio and video
 45 transmission, the chief district court judge shall submit to the Administrative Office of the Courts
 46 the procedures and type of equipment for audio and video transmission for approval by the
 47 Administrative Office of the Courts. Notwithstanding the provisions of this subsection, if the
 48 respondent, through counsel, objects to a hearing held by audio and video transmission, the
 49 hearing shall be held in the physical presence of the presiding district court judge. Regardless of
 50 the manner and location for hearings, hearings shall be held in a manner that complies with any
 51 applicable federal and State laws governing the confidentiality and security of confidential

1 information, including any information transmitted from the treatment facility by audio and video
2 transmission. If the respondent has counsel, the respondent shall be allowed to communicate fully
3 and confidentially with his attorney during the proceeding. Prior to the use of the audio and video
4 transmission, the procedures and type of equipment for audio and video transmission shall be
5 submitted to the Administrative Office of the Courts by the chief district court judge and
6 approved by the Administrative Office of the Courts.

7"

8 **SECTION 30.** G.S. 122C-271 reads as rewritten:

9 **"§ 122C-271. Disposition.**

10 (a) If ~~an examining physician or eligible psychologist~~ a commitment examiner has
11 recommended outpatient commitment and the respondent has been released pending the district
12 court hearing, the court may make one of the following dispositions:

13 (1) If the court finds by clear, cogent, and convincing evidence that the respondent
14 is mentally ill; that he is capable of surviving safely in the community with
15 available supervision from family, friends, or others; that based on
16 respondent's treatment history, the respondent is in need of treatment in order
17 to prevent further disability or deterioration that would predictably result in
18 dangerousness as defined in G.S. 122C-3(11); and that the respondent's
19 current mental status or the nature of his illness limits or negates his ability to
20 make an informed decision to seek voluntarily or comply with recommended
21 treatment, it may order outpatient commitment for a period not in excess of
22 90 days.

23 (2) If the court does not find that the respondent meets the criteria of commitment
24 set out in subdivision (1) of this subsection, the respondent shall be discharged
25 and the ~~facility at which he was last a client~~ proposed outpatient physician
26 center so notified.

27 (3) Before ordering any outpatient commitment under this subsection, the court
28 shall make findings of fact as to the availability of outpatient treatment from
29 an outpatient treatment physician or center that has agreed to accept the
30 respondent as a client of outpatient treatment services. The court shall show
31 on the order the outpatient treatment physician or center that is to be
32 responsible for the management and supervision of the respondent's outpatient
33 commitment. If the designated outpatient treatment physician or center will
34 be monitoring and supervising the respondent's outpatient commitment
35 pursuant to a contract for services with an LME/MCO, the court shall show
36 on the order the identity of the LME/MCO. The clerk of court shall send a
37 copy of the outpatient commitment order to the designated outpatient
38 treatment physician or center and to the respondent client or the legally
39 responsible person. The clerk of court shall also send a copy of the order to
40 that LME/MCO. Copies of outpatient commitment orders sent by the clerk of
41 court to an outpatient treatment center or physician under this section,
42 including orders sent to an LME/MCO, shall be sent by the most reliable and
43 expeditious means, but in no event less than 48 hours after the hearing.

44 (b) If the respondent has been held in a 24-hour facility pending the district court hearing
45 pursuant to G.S. 122C-268, the court may make one of the following dispositions:

46 ...

47 (4) Before ordering any outpatient commitment, the court shall make findings of
48 fact as to the availability of outpatient ~~treatment~~ treatment from an outpatient
49 treatment physician or center that has agreed to accept the respondent as a
50 client of outpatient treatment services. The court shall also show on the order
51 the outpatient treatment physician or center who is to be responsible for the

1 management and supervision of the respondent's outpatient commitment.
 2 When an outpatient commitment order is issued for a respondent held in a
 3 24-hour facility, the court may order the respondent held at the facility for no
 4 more than 72 hours in order for the facility to notify the designated outpatient
 5 treatment physician or center of the treatment needs of the respondent. The
 6 clerk of court in the county where the facility is located shall send a copy of
 7 the outpatient commitment order to the designated outpatient treatment
 8 physician or ~~center~~ center and to the respondent or the legally responsible
 9 person. If the designated outpatient treatment physician or center shall be
 10 monitoring and supervising the respondent's outpatient commitment pursuant
 11 to a contract for services with an LME/MCO, the clerk of court shall how on
 12 the order the identity of the LME/MCO. The clerk of court shall send a copy
 13 of the order to the LME/MCO. Copies of outpatient commitment orders sent
 14 by the clerk of court to an outpatient treatment center or physician pursuant to
 15 this subdivision, including orders sent to an LME/MCO, shall be sent by the
 16 most reliable and expeditious means, but in no event less than 48 hours after
 17 the hearing. If the outpatient commitment will be supervised in a county other
 18 than the county where the commitment originated, the court shall order venue
 19 for further court proceedings to be transferred to the county where the
 20 outpatient commitment will be supervised. Upon an order changing venue, the
 21 clerk of superior court in the county where the commitment originated shall
 22 transfer the file to the clerk of superior court in the county where the outpatient
 23 commitment is to be supervised.

24"

25 **SECTION 31.** G.S. 122C-276 reads as rewritten:

26 **"§ 122C-276. Inpatient commitment; rehearings for respondents other than insanity**
 27 **acquittees.**

28 ...

29 (c) Subject to the provisions of G.S. 122C-269(c), rehearings shall be held ~~at the facility~~
 30 ~~in which the respondent is receiving treatment~~ as authorized in G.S. 122C-268(g). The judge is
 31 a judge of the district court of the district court district as defined in G.S. 7A-133 in which the
 32 facility is located or a district court judge temporarily assigned to that district.

33"

34 **SECTION 32.** G.S. 122C-281 reads as rewritten:

35 **"§ 122C-281. Affidavit and petition before clerk or magistrate; custody order.**

36 (a) Any individual who has knowledge of a substance abuser who is dangerous to ~~himself~~
 37 self or others may appear before a clerk or assistant or deputy clerk of superior court or a
 38 magistrate, execute an affidavit to this effect, and petition the clerk or magistrate for issuance of
 39 an order to take the respondent into custody for examination by a ~~physician or eligible~~
 40 psychologist commitment examiner. The affidavit shall include the facts on which the affiant's
 41 opinion is based. Jurisdiction under this subsection is in the clerk or magistrate in the county
 42 where the respondent resides or is found.

43 (b) If the clerk or magistrate finds reasonable grounds to believe that the facts alleged in
 44 the affidavit are true and that the respondent is probably a substance abuser and dangerous to
 45 ~~himself self~~ or others, ~~he the clerk or magistrate shall issue an order to a law enforcement law~~
 46 enforcement officer or any other person authorized by G.S. 122C-251 designated under
 47 G.S.122C-251(g) to take the respondent into custody for examination by a ~~physician or eligible~~
 48 psychologist commitment examiner.

49 (c) If the clerk or magistrate issues a custody order, ~~he the clerk or magistrate shall also~~
 50 make inquiry in any reliable way as to whether the respondent is indigent within the meaning of
 51 G.S. 7A-450. A magistrate shall report the result of this inquiry to the clerk.

1 (d) If the affiant is a ~~physician or eligible psychologist~~, commitment examiner who has
2 examined the respondent, he or she may execute the affidavit before any official authorized to
3 administer oaths. ~~He~~ The commitment examiner is not required to appear before the clerk or
4 magistrate for this purpose. ~~His~~ The commitment examiner's examination shall comply with the
5 requirements of the initial examination as provided in G.S. 122C-283(c). The affiant shall file
6 the affidavit and examination findings with the clerk of court in the manner described in
7 G.S. 122C-261(d)(1). If the ~~physician or eligible psychologist~~ commitment examiner
8 recommends commitment and the clerk or magistrate finds probable cause to believe that the
9 respondent meets the criteria for commitment, ~~he~~ the clerk or magistrate shall issue an order to a
10 law enforcement officer to take the respondent into custody for transportation to or custody at a
11 24-hour facility or release the respondent, facility, or, if the respondent is released pending
12 hearing, as described in G.S. 122C-283(d)(1). G.S. 122C-283(d)(1), order that a hearing be held
13 as provided in G.S. 122C-284(a). If a physician or eligible psychologist executes an affidavit for
14 commitment of a respondent, a second qualified professional shall perform the examination
15 required by G.S. 122C-285. Any person or entity who or which has been designated in
16 compliance with G.S. 122C-251(g) shall be permitted to complete all or part of the duties of a
17 law enforcement officer, in accord with the designation.

18 (e) Upon receipt of the custody order of the clerk or magistrate, a ~~law enforcement~~ law
19 enforcement officer or other person designated person identified in the order shall take the
20 respondent into custody within 24 hours after the order is signed. The custody order is valid
21 throughout the State.

22 (e1) No commitment examiner, area facility, acute care hospital, general hospital, or other
23 site of first examination, or their officials, staff, employees, or other individuals responsible for
24 the custody, examination, detention, management, supervision, treatment, or release of an
25 individual examined for commitment, who is not grossly negligent, shall be held liable in any
26 civil or criminal action for taking measures to temporarily detain an individual for the period of
27 time necessary to complete a commitment examination, submit an affidavit to the magistrate or
28 clerk of court, and await the issuance of a custody order as authorized by subsection (d) of this
29 section.

30 (f) ~~When a petition is filed for an individual who is a resident of a single portal area, the~~
31 ~~procedures for examination by a physician or eligible psychologist as set forth in G.S.~~
32 ~~122C-283(c) shall be carried out in accordance with the area plan. When an individual from a~~
33 ~~single portal area is presented for commitment at a facility directly, he may be accepted for~~
34 ~~admission in accordance with G.S. 122C-285. The facility shall notify the area authority within~~
35 ~~24 hours of admission and further planning of treatment for the individual is the joint~~
36 ~~responsibility of the area authority and the facility as prescribed in the area plan."~~

37 **SECTION 33.** G.S. 122C-282 reads as rewritten:

38 **"§ 122C-282. Special emergency procedure for violent individuals.**

39 When an individual subject to commitment under the provisions of this Part is also violent
40 and requires restraint and when delay in taking ~~him~~ the individual to a ~~physician or eligible~~
41 ~~psychologist~~ commitment examiner for examination would likely endanger life or property, a
42 ~~law enforcement~~ law enforcement officer may take the person into custody and take him or her
43 immediately before a magistrate or clerk. The ~~law enforcement~~ law enforcement officer shall
44 execute the affidavit required by G.S. 122C-281 and in addition shall swear that the respondent
45 is violent and requires restraint and that delay in taking the respondent to a ~~physician or eligible~~
46 ~~psychologist~~ commitment examiner for an examination would endanger life or property.

47 If the clerk or magistrate finds by clear, cogent, and convincing evidence that the facts stated
48 in the affidavit are true, that the respondent is in fact violent and requires restraint, and that delay
49 in taking the respondent to a ~~physieian or eligible psychologist~~ commitment examiner for an
50 examination would endanger life or property, ~~he~~ the clerk or magistrate shall order the

1 ~~law enforcement~~ law enforcement officer to take the respondent directly to a 24-hour facility
2 described in G.S. 122C-252.

3 Respondents received at a 24-hour facility under the provisions of this section shall be
4 examined and processed thereafter in the same way as all other respondents under this Part."

5 **SECTION 34.** G.S. 122C-283 reads as rewritten:

6 "**§ 122C-283. Duties of law-enforcement officer; first examination by ~~physician or eligible~~**
7 **psychologist, commitment examiner.**

8 (a) Without unnecessary delay after assuming custody, the ~~law enforcement~~ law
9 enforcement officer or the individual designated ~~by the clerk or magistrate or required to provide~~
10 transportation under G.S. 122C-251(g) ~~to provide transportation~~ shall take the respondent to an
11 area a facility for examination by a physician or eligible psychologist if a physician or eligible
12 psychologist is not available in the area facility, he shall take the respondent to any physician or
13 eligible psychologist locally available, or other location identified by the LME/MCO in the
14 community crisis services plan adopted pursuant to G.S. 122C-202.2 that has an available
15 commitment examiner and is capable of performing a first examination in conjunction with a
16 health screening in the same location, unless exigent circumstances require the respondent be
17 transported to an emergency department. If a commitment examiner is not available, whether
18 on-site, on-call, or via telemedicine, at any facility or location, or if a plan has not been adopted,
19 the person designated to provide transportation shall take the respondent to an alternative
20 non-hospital provider or facility-based crisis center for a first examination in conjunction with a
21 health screening at the same location. If no non-hospital provider or facility-based crisis center
22 for a first examination in conjunction with a health screening at the same location, the person
23 designated to provide transportations shall take the respondent to a private hospital or clinic, a
24 general hospital, an acute care hospital, or a State facility for the mentally ill. If a ~~physician or~~
25 eligible psychologist commitment examiner is not immediately available, the respondent may be
26 temporarily detained in an area facility if one is available; if an area facility is not available, he
27 may be detained under appropriate supervision, in his home, in a private hospital or a clinic, or
28 in a general hospital, but not in a jail or other penal facility. For the purposes of this section,
29 "non-hospital provider" means an outpatient provider that provides either behavioral health or
30 medical services.

31 (a1) A facility, or other location to which a respondent is transported under subsection (a)
32 of this section, shall provide a health screening of the respondent. The health screening shall be
33 conducted by a physician or other individual who is determined by the area facility, contracted
34 facility, or other location to be qualified to perform the health screening. The respondent may
35 either be in the physical face-to-face presence of the health screening examiner or may be
36 examined utilizing telemedicine equipment and procedures. Documentation of the health
37 screening required under this subsection that is completed prior to transporting the patient to any
38 general or acute care hospital shall accompany the patient or otherwise be made available at the
39 time of transportation to the receiving facility.

40 (b) The examination set forth in subsection (a) of this section is not required ~~if~~ under
41 either of the following circumstances:

42 (1) The affiant who obtained the custody order is a ~~physician or eligible~~
43 psychologist; or commitment examiner.

44 (2) The respondent is in custody under the special emergency procedure described
45 in G.S. 122C-282.

46 In these cases when it is recommended that the respondent be detained in a 24-hour facility, the
47 ~~law enforcement~~ law enforcement officer shall take the respondent directly to a 24-hour facility
48 described in G.S. 122C-252.

49 (c) The ~~physician or eligible psychologist~~ commitment examiner described in subsection
50 (a) of this section shall examine the respondent as soon as possible, and in any event within 24

1 hours, after the respondent is presented for examination. The examination shall include but is not
2 limited to an assessment of the respondent's:

- 3 (1) Current and previous substance abuse including, if available, previous
4 treatment history; and
5 (2) Dangerousness to himself or others as defined in G.S. 122C-3(11).

6 (d) After the conclusion of the ~~examination~~ examination, the ~~physician or eligible~~
7 ~~psychologist commitment examiner~~ shall make the following determinations:

- 8 (1) If the ~~physician or eligible psychologist commitment examiner~~ finds that the
9 respondent is a substance abuser and is dangerous to ~~himself self~~ or others, ~~he~~
10 ~~the commitment examiner~~ shall recommend commitment and whether the
11 respondent should be released or be held at a 24-hour facility pending hearing
12 and shall so show on ~~the~~ ~~his~~ ~~the~~ examination report. Based on the ~~physician's~~
13 ~~or eligible psychologist's~~ ~~recommendation~~ ~~commitment examiner's~~
14 ~~recommendation~~, the ~~law enforcement~~ law enforcement officer or other
15 designated individual shall take the respondent to a 24-hour facility described
16 in G.S. 122C-252 or release the respondent. If a 24-hour facility is not
17 immediately available or medically appropriate, the respondent may be
18 temporarily detained under appropriate supervision and the procedures
19 described in G.S. 122C-263(d)(2) shall apply.
20 (2) If the ~~physician or eligible psychologist commitment examiner~~ finds that the
21 condition described in subdivision (1) of this subsection does not exist, the
22 respondent shall be released and the proceedings terminated.

23 (e) The findings of the ~~physician or eligible psychologist commitment examiner~~ and the
24 facts on which they are based shall be in writing in all cases. A copy of the findings shall be sent
25 to the clerk of superior court by the most reliable and expeditious means. If it cannot be
26 reasonably anticipated that the clerk will receive the copy within 48 hours ~~of~~ after the time ~~that~~
27 it was signed, the ~~physician or eligible psychologist commitment examiner~~ shall also
28 communicate ~~his~~ ~~the~~ findings to the clerk by telephone."

29 **SECTION 35.** G.S. 122C-284 reads as rewritten:

30 **"§ 122C-284. Duties of clerk of superior court.**

31 (a) Upon receipt ~~by the clerk of superior court of a~~ ~~physician's or eligible psychologist's~~
32 ~~finding made by a commitment examiner or other qualified professional pursuant to~~
33 ~~G.S. 122C-285(c)~~ that a respondent is a substance abuser and dangerous to ~~himself self~~ or others
34 and that commitment is recommended, the clerk of superior court of the county where the facility
35 is located, if the respondent is held in a 24-hour facility, or the clerk of superior court where the
36 petition was initiated shall upon direction of a district court judge assign counsel, calendar the
37 matter for hearing, and notify the respondent, ~~his~~ ~~the~~ respondent's counsel, and the petitioner of
38 the time and place of the hearing. The petitioner or respondent, directly, or through counsel, may
39 file a written waiver of ~~his~~ ~~the~~ right to notice under this subsection with the clerk of court.

40 (b) Notice to the respondent required by subsection (a) of this section shall be given as
41 provided in G.S. 1A-1, Rule 4(j) at least 72 hours before the hearing. Notice to other individuals
42 shall be given by mailing at least 72 hours before the hearing a copy by first-class mail postage
43 prepaid to the individual at his or her last known address. G.S. 1A-1, Rule 6 shall not apply.

44"

45 **SECTION 36.** G.S. 122C-285 reads as rewritten:

46 **"§ 122C-285. Commitment; second examination and treatment pending hearing.**

47 (a) Within 24 hours of arrival at a 24-hour facility described in G.S. 122C-252, the
48 respondent shall be examined by a qualified professional. This professional shall be a physician
49 if the initial commitment evaluation was conducted by ~~an eligible psychologist~~ a commitment
50 examiner who is not a physician. The examination shall include the assessment specified in
51 G.S. 122C-283(c). If the physician or qualified professional finds that the respondent is a

1 substance abuser and is dangerous to ~~himself~~ self or others, ~~he~~ the physician or qualified
2 professional shall hold and treat the respondent at the facility or designate other treatment
3 pending the district court hearing. If the physician or qualified professional finds that the
4 respondent does not meet the criteria for commitment under G.S. 122C-283(d)(1), ~~he~~ the
5 physician or qualified professional shall release the respondent and the proceeding shall be
6 terminated. In this case the reasons for the release shall be reported in writing to the clerk of
7 superior court of the county in which the custody order originated. If the respondent is released,
8 the ~~law enforcement~~ law enforcement officer or other person designated or required under
9 G.S. 122C-251(g) to provide transportation shall return the respondent to the originating county.

10 (b) If the 24-hour facility described in G.S. 122C-252 is the facility in which the first
11 examination by a ~~physician or eligible psychologist~~ commitment examiner occurred and is the
12 same facility in which the respondent is held, the second examination must occur not later than
13 the following regular working day.

14 (c) The findings of the physician or qualified professional along with a summary of the
15 facts on which they are based shall be made in writing in all cases. A copy of the written findings
16 shall be sent to the clerk of superior court by reliable and expeditious means."

17 **SECTION 37.** G.S. 122C-286 reads as rewritten:

18 "**§ 122C-286. Commitment; district court hearing.**

19 (a) A hearing shall be held in district court within 10 days of the day the respondent is
20 taken into custody. If a respondent temporarily detained under G.S. 122C-263(d)(2) is subject to
21 a series of successive custody orders issued pursuant to G.S. 122C-263(d)(2), the hearing shall
22 be held within 10 days after the day the respondent is taken into custody under the most recent
23 custody order. Upon its own motion or upon motion of the responsible professional, the
24 respondent, or the State, the court may grant a continuance of not more than five days.

25 (b) The respondent shall be present at the ~~hearing~~ hearing unless the respondent, through
26 counsel, submits a written waiver of personal appearance. A subpoena may be issued to compel
27 the respondent's presence at a hearing. The petitioner and the responsible professional of the area
28 ~~authority~~ facility or the proposed treating physician or ~~his~~ a designee of the proposed treating
29 physician may be present and may provide testimony.

30 (c) Certified copies of reports and findings of ~~physicians and psychologists~~ physicians,
31 psychologists, and other commitment examiners and medical records of previous and current
32 treatment are admissible in evidence, but the respondent's right to confront and cross-examine
33 witnesses shall not be denied.

34 (d) The respondent may be represented by counsel of ~~his~~ choice. If the respondent is
35 indigent within the meaning of G.S. 7A-450, counsel shall be appointed to represent the
36 respondent in accordance with rules adopted by the Office of Indigent Defense Services.

37 (e) Hearings may be held at a facility if it is located within the judge's district court district
38 as defined in G.S. 7A-133 or in the judge's chambers. A hearing may not be held in a regular
39 courtroom, over objection of the respondent, if in the discretion of a judge a more suitable place
40 is available.

41 (f) The hearing shall be closed to the public unless the respondent requests otherwise.
42 The hearing for a respondent being held at a 24-hour facility shall be held in a location and in the
43 manner provided in G.S. 122C-268(g).

44 (g) A copy of all documents admitted into evidence and a transcript of the proceedings
45 shall be furnished to the respondent on request by the clerk upon the direction of a district court
46 judge. If the respondent is indigent, the copies shall be provided at State expense.

47 (h) To support a commitment order, the court shall find by clear, cogent, and convincing
48 evidence that the respondent meets the criteria specified in G.S. 122C-283(d)(1). The court shall
49 record the facts that support its findings and shall show on the order the area ~~authority~~ facility or
50 physician who is responsible for the management and supervision of the respondent's treatment."

51 **SECTION 38.** G.S. 122C-287 reads as rewritten:

"§ 122C-287. Disposition.

The court may make one of the following dispositions:

- (1) If the court finds by clear, cogent, and convincing evidence that the respondent is a substance abuser and is dangerous to ~~himself~~self or others, it shall order for a period not in excess of 180 days commitment to and treatment by an area ~~authority~~facility or physician who is responsible for the management and supervision of the respondent's commitment and treatment. Before ordering commitment to and treatment by an area facility or a physician who is not a physician at an inpatient facility, the court shall follow the procedures specified in G.S. 122C-271(a)(3) and G.S. 122C-271(b)(4), as applicable.
- (2) If the court finds that the respondent does not meet the commitment criteria set out in subdivision (1) of this subsection, the respondent shall be discharged and the facility in which he was last treated so notified."

SECTION 39. G.S. 122C-290 reads as rewritten:

"§ 122C-290. Duties for follow-up on commitment order.

(a) The area ~~authority~~facility or physician responsible for management and supervision of the respondent's commitment and treatment may prescribe or administer to the respondent reasonable and appropriate treatment either on an outpatient basis or in a 24-hour facility.

(b) If the respondent whose treatment is provided on an outpatient basis fails to comply with all or part of the prescribed treatment after reasonable effort to solicit the respondent's compliance or whose treatment is provided on an inpatient basis is discharged in accordance with G.S. 122C-205.1(b), the area ~~authority~~facility or physician may request the clerk or magistrate to order the respondent taken into custody for the purpose of examination. Upon receipt of this request, the clerk or magistrate shall issue an order to a law enforcement officer to take the respondent into custody and to take him immediately to the designated area ~~authority~~facility or physician for examination. The custody order is valid throughout the State. The law enforcement officer shall turn the respondent over to the custody of the physician or area ~~authority~~facility who shall conduct the examination and release the respondent or have the respondent taken to a 24-hour facility upon a determination that treatment in the facility will benefit the respondent. Transportation to the 24-hour facility shall be provided as specified in G.S. 122C-251, upon notice to the clerk or magistrate that transportation is necessary, or as provided in G.S. 122C-408(b). If placement in a 24-hour facility is to exceed 45 consecutive days, the area ~~authority~~facility or physician shall notify the clerk of court by the 30th day and request a supplemental hearing as specified in G.S. 122C-291.

(c) If the respondent intends to move or moves to another county within the State, the area ~~authority~~facility or physician shall notify the clerk of court in the county where the commitment is being supervised and request that a supplemental hearing be calendared.

(d) If the respondent moves to another state or to an unknown location, the designated area ~~authority~~facility or physician shall notify the clerk of superior court of the county where the commitment is supervised and the commitment shall be terminated."

SECTION 40. G.S. 122C-291 reads as rewritten:

"§ 122C-291. Supplemental hearings.

(a) Upon receipt of a request for a supplemental hearing, the clerk shall calendar a hearing to be held within 14 days and notify, at least 72 hours before the hearing, the petitioner, the respondent, his attorney, if any, and the designated area ~~authority~~facility or physician. Notice shall be provided in accordance with G.S. 122C-284(b). The procedures for the hearing shall follow G.S. 122C-286.

(b) At the supplemental hearing for a respondent who has moved or may move to another county, the court shall determine if the respondent meets the criteria for commitment set out in G.S. 122C-283(d)(1). If the court determines that the respondent no longer meets the criteria for commitment, it shall discharge the respondent from the order and dismiss the case. If the court

1 determines that the respondent continues to meet the criteria for commitment, it shall continue
2 the commitment but shall designate an area ~~authority-facility~~ or physician at the respondent's new
3 residence to be responsible for the management or supervision of the respondent's commitment.
4 The court shall order the respondent to appear for treatment at the address of the newly designated
5 area ~~authority-facility~~ or physician and shall order venue for further court proceedings under the
6 commitment to be transferred to the new county of supervision. Upon an order changing venue,
7 the clerk of court in the county where the commitment has been supervised shall transfer the
8 records regarding the commitment to the clerk of court in the county where the commitment will
9 be supervised. Also, the clerk of court in the county where the commitment has been supervised
10 shall send a copy of the court's order directing the continuation of treatment under new
11 supervision to the newly designated area ~~authority-facility~~ or physician.

12"

13 **SECTION 41.** G.S. 122C-292 reads as rewritten:

14 "**§ 122C-292. Rehearings.**

15 (a) Fifteen days before the end of the initial or subsequent periods of commitment if the
16 area ~~authority-facility~~ or physician determines that the respondent continues to meet the criteria
17 specified in G.S. 122C-283(d)(1), the clerk of superior court of the county where commitment is
18 supervised shall be notified. The clerk, at least 10 days before the end of the commitment period,
19 on order of the district court, shall calendar the rehearing. If the respondent no longer meets the
20 criteria, the area ~~authority-facility~~ or physician shall so notify the clerk who shall dismiss the
21 case.

22 (b) Rehearings are governed by the same notice and procedures as initial hearings, and
23 the respondent has the same rights ~~he had that were available to the respondent~~ at the initial
24 hearing including the right to appeal.

25 (c) If the court finds that the respondent no longer meets the criteria of
26 G.S. 122C-283(d)(1), it shall unconditionally discharge him. A copy of the discharge order shall
27 be furnished by the clerk to the designated area ~~authority-facility~~ or physician. If the respondent
28 continues to meet the criteria of G.S. 122C-283(d)(1), the court may order commitment for
29 additional periods not in excess of 365 days each."

30 **SECTION 42.** G.S. 122C-293 reads as rewritten:

31 "**§ 122C-293. Release by area ~~authority-facility~~ or physician.**

32 The area ~~authority-facility~~ or physician as designated in the order shall discharge a committed
33 respondent unconditionally at any time ~~he the physician~~ determines that the respondent no longer
34 meets the criteria of G.S. 122C-283(d)(1). Notice of discharge and the reasons for the release
35 shall be reported in writing to the clerk of superior court of the county in which the commitment
36 was ordered."

37 **SECTION 43.** G.S. 122C-294 reads as rewritten:

38 "**§ 122C-294. Local ~~plan~~.plan and data submission.**

39 ~~(a) Each area authority shall develop a local plan with local law enforcement agencies,~~
40 ~~local courts, local hospitals, and local medical societies necessary to facilitate implementation of~~
41 ~~this Part.~~The local plan in accordance with G.S. 122C-202.2 and G.S. 122C-251(g) shall be
42 submitted to the Division of Mental Health, Developmental Disabilities, and Substance Abuse
43 Services on or before October 1, 2019. If the area authority modifies the plan, the modified plan
44 shall be submitted to the Division of Mental Health, Developmental Disabilities, and Substance
45 Abuse Services at least 10 days prior to the effective date of the new plan.

46 (b) The Department shall provide the data collected by the Division of Mental Health,
47 Developmental Disabilities, and Substance Abuse Services concerning the number of
48 respondents receiving treatment under involuntary commitment in designated facilities to the
49 Fiscal Research Division and the Joint Legislative Oversight Committee for Health and Human
50 Services on October 1 of each year beginning in 2019 and any other time upon request."

1 **SECTION 44.** Each LME/MCO shall submit to the Department of Health and
2 Human Services a copy of its current community crisis services plan adopted pursuant to
3 G.S. 122C-202.2, as enacted by this act, by the earlier of (i) 12 months after the date the
4 Department receives notification that the federal Centers for Medicaid and Medicare Services
5 has approved all necessary waivers and State Plan amendments for Medicaid and NC Health
6 Choice transformation as provided for in S.L. 2015-245, as amended, or (ii) six months prior to
7 the date the Department actually initiates capitated contracts with Prepaid Health Plans, as
8 defined in Section 4 of S.L. 2015-245, as amended, for the delivery of Medicaid and NC Health
9 Choice services. The Department shall notify each LME/MCO when the earlier of these
10 conditions occurs.

11 **SECTION 45.(a)** G.S. 35A-1105 reads as rewritten:

12 **"§ 35A-1105. Petition before clerk.**

13 A verified petition for the adjudication of incompetence of an adult, or of a minor who is
14 within six months of reaching majority, may be filed with the clerk by any person, including any
15 State or local human services agency or healthcare provider through its authorized
16 ~~representative~~ representative without the need for legal counsel."

17 **SECTION 45.(b)** G.S. 35A-1112 reads as rewritten:

18 **"§ 35A-1112. Hearing on petition; adjudication order.**

19 ...

20 (b) The petitioner and the respondent are entitled to present testimony and documentary
21 evidence, to subpoena witnesses and the production of documents, and to examine and
22 cross-examine witnesses. If the petitioner is a State or local human service agency or a health
23 care provider, evidence may be presented without the need for legal counsel.

24 "

25 **SECTION 46.** Sections 5(c1), 44, 45(a), and 45(b) of this act are effective when the
26 act becomes law. The remainder of this act becomes effective October 1, 2019, and applies to
27 proceedings initiated on or after that date.