

mental illnesses or intellectual or other developmental disabilities or substance abusers.

- (15) Guardian. – A person appointed as a guardian of the person or general guardian by the court under Chapters 7A or 35A or former Chapters 33 or 35 of the General Statutes.
- (16) Habilitation. – Training, care, and specialized therapies undertaken to assist a client in maintaining his current level of functioning or in achieving progress in developmental skills areas.
- (16a) Health screening. – An appropriate screening suitable for the symptoms presented and within the capability of the entity, including ancillary services routinely available to the entity, to determine whether or not an emergency medical condition exists. An emergency medical condition exists if an individual has acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in placing the individual's health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.
- (16b) Incapable. – With respect to an individual, as defined in G.S. 122C-72(4). An adult individual who is incapable is not the same as an incompetent adult unless the adult individual has been adjudicated incompetent under Chapter 35A of the General Statutes.
- (17) Incompetent adult. – An adult individual who has been adjudicated incompetent under Chapter 35A of the General Statutes.
- (17a) Intellectual disability. – A developmental disability characterized by significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested before age 22.
- (18) Intoxicated. – The condition of an individual whose mental or physical functioning is presently substantially impaired as a result of the use of alcohol or other substance.
- (19) Law enforcement officer. – Sheriff, deputy sheriff, police officer, State highway patrolman, or an officer employed by a city or county under G.S. 122C-302.
- (20) Legally responsible person. – The following:
  - a. When applied to an adult who has been adjudicated incompetent, a guardian.
  - b. When applied to a minor, a parent, guardian, person standing in loco parentis, or legal custodian other than a parent who has been granted specific authority by law or in a custody order to consent for medical care, including psychiatric treatment.
  - c. When applied to an adult who is incapable as defined in G.S. 122C-72(4) and who has not been adjudicated incompetent, a health care agent named pursuant to a valid health care power of attorney. If an incapable adult does not have a health care agent or

type of facility apply only to the designated facility or facilities. (1985, c. 589, s. 2; 1989, c. 625, s. 20; 2019-76, s. 4.)

**§ 122C-202.1. Hospital privileges.**

Nothing in this Article related to admission, commitment, or treatment shall be deemed to mandate hospitals to grant or deny to any individuals privileges to practice in hospitals. (1985, c. 589, s. 2.)

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

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

- (1) Incorporate the involuntary commitment transportation agreement adopted pursuant to G.S. 122C-251(g) for the cities and counties within the local planning areas which identifies the law enforcement officers, designees under G.S. 122C-251(g), or individuals or entities otherwise required to provide custody and transportation of a respondent for a first examination in conjunction with a health screening at the same location required by G.S. 122C-263(a) and G.S. 122C-283. Notwithstanding the foregoing, counties and cities shall retain the responsibilities for custody and transportation set forth in this Article, except as otherwise set forth in a plan developed, agreed upon, and adopted in compliance with this section and G.S. 122C-251(g).
- (2) Identify one or more area facilities or other locations in accordance with G.S. 122C-263 and G.S. 122C-283. Each LME/MCO shall contract with one or more facilities or other locations described in G.S. 122C-263 and G.S. 122C-283 for the provision of health screenings and first examinations required by G.S. 122C-263 and G.S. 122C-283 for the provision of first examination in conjunction with a health screening required by G.S. 122C-263 and G.S. 122C-283, to meet the needs of its local planning area.
- (3) Identify available training for law enforcement personnel and other persons designated or required under G.S. 122C-251(g) to provide transportation and custody of involuntary commitment respondents. Law

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

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

(c) The plans adopted under this section may, by mutual agreement of all entities identified in the plan, address any other matters necessary to facilitate the custody, transportation, examination, and treatment of respondents to commitment proceedings under Parts 7 and 8 of this Article. (2018-33, s. 8.)

**§ 122C-203. Admission or commitment and incompetency proceedings to have no effect on one another.**

The admission or commitment to a facility of an individual who allegedly has a mental illness, an alleged substance abuser, or an individual who allegedly has an intellectual or other developmental disability under the provisions of this Article shall in no way affect incompetency proceedings as set forth in Chapter 35A or former Chapters 33 or 35 of the General Statutes and incompetency proceedings under those Chapters shall have no effect upon admission or commitment proceedings under this Article. (1963, c. 1184, s. 1; 1985, c. 589, s. 2; 1989, c. 625, s. 21; 1989 (Reg. Sess., 1990), c. 1024, s. 26(b); 2019-76, s. 5.)

**§ 122C-204. Civil liability for corruptly attempting admission or commitment.**

Nothing in this Article relieves from liability in any suit instituted in the courts of this State any individual who unlawfully, maliciously, and corruptly attempts to admit or commit any individual to any facility under this Article. (1963, c. 1184, s. 1; 1985, c. 589, s. 2.)

**§ 122C-205. Return of clients to 24-hour facilities.**

- (a) When a client of a 24-hour facility who:
- (1) Has been involuntarily committed;
  - (2) Is being detained pending a judicial hearing;
  - (3) Has been voluntarily admitted but is a minor or incompetent adult;
  - (4) Has been placed on conditional release from the facility; or
  - (5) Has been involuntarily committed or voluntarily admitted and is the subject of a detainer placed with the 24-hour facility by an appropriate official

escapes or breaches a condition of his release, if applicable, the responsible professional shall notify or cause to be notified immediately the appropriate law enforcement agency in the county of residence of the client, the appropriate law enforcement agency in the county where the facility is located, and the appropriate law enforcement agency in any county where there are reasonable grounds to believe that the client may be found. The responsible professional shall determine the amount of personal identifying and background information reasonably necessary to divulge to the law enforcement agency or agencies under the particular circumstances involved in order to assure the expeditious return of the client to the 24-hour facility involved and protect the general public.

(b) When a competent adult who has been voluntarily admitted to a 24-hour facility escapes or breaches a condition of his release, the responsible professional, in the exercise of accepted professional judgment, practice, and standards, will determine if it is reasonably foreseeable that:

- (1) The client may cause physical harm to others or himself;
- (2) The client may cause damage to property;
- (3) The client may commit a felony or a violent misdemeanor; or
- (4) That the health or safety of the client may be endangered

unless he is immediately returned to the facility. If the responsible professional finds that any or all of these occurrences are reasonably foreseeable, he will follow the same procedures as those set forth in subsection (a) of this section.

(c) Upon receipt of notice of an escape or breach of a condition of release as described in subsections (a) and (b) of this section, an appropriate law enforcement officer shall take the client into custody and have the client returned to the 24-hour facility from which the client has escaped or has been conditionally released. Transportation of the client back to the 24-hour facility shall be provided in the same manner as described in G.S. 122C-251 and G.S. 122C-408(b). Law enforcement agencies who are notified of a client's escape or breach of conditional release shall be notified of the client's return by the responsible 24-hour facility. Under the circumstances described in this section, the initial notification by the 24-hour facility of the client's escape or breach of conditional release shall be given by telephone communication to the appropriate law enforcement agency or agencies and, if available and appropriate, by Department of Public Safety message to any law enforcement agency in or out of state and by entry into the National Crime Information Center (NCIC) telecommunications system. As soon as reasonably possible following

notification, written authorization to take the client into custody shall also be issued by the 24-hour facility. Under this section, law enforcement officers shall have the authority to take a client into custody upon receipt of the telephone notification or Department of Public Safety message prior to receiving written authorization. The notification of a law enforcement agency does not, in and of itself, render this information public information within the purview of Chapter 132 of the General Statutes. However, the responsible law enforcement agency shall determine the extent of disclosure of personal identifying and background information reasonably necessary, under the circumstances, in order to assure the expeditious return of a client to the 24-hour facility involved and to protect the general public and is authorized to make such disclosure. The responsible law enforcement agency may also place any appropriate message or entry into either the Department of Public Safety's Criminal Information System or National Crime Information System, or both, as appropriate.

(d) In the situations described in subsections (a) and (b) of this section, the responsible professional shall also notify or cause to be notified as soon as practicable:

- (1) The next of kin of the client or legally responsible person for the client;
- (2) The clerk of superior court of the county of commitment of the client;
- (3) The area authority of the county of residence of the client, if appropriate;
- (4) The physician or eligible psychologist who performed the first examination for a commitment of the client, if appropriate; and
- (5) Any official who has placed a detainer on a client as described in subdivision (a)(5) of this section

of the escape or breach of condition of the client's release upon occurrence of either action and of his subsequent return to the facility. (1899, c. 1, s. 27; Rev., s. 4563; C.S., s. 6175; 1927, c. 114; 1945, c. 952, s. 12; 1953, c. 256, s. 1; 1955, c. 887, s. 3; 1973, c. 673, s. 11; 1983, c. 548; 1985, c. 589, s. 2; c. 695, s. 2; 1985 (Reg. Sess., 1986), c. 863, ss. 12-14; 1987, c. 749, s. 1; 2014-100, s. 17.1(eee).)

#### **§ 122C-205.1. Discharge of clients who escape or breach the condition of release.**

(a) As described in G.S. 122C-205(a), when a client of a 24-hour facility escapes or breaches the condition of his release and does not return to the facility, the facility shall:

- (1) If the client was admitted under Part 2 of this Article or under Parts 3 or 4 of this Article to a nonrestrictive facility, discharge the client based on the professional judgment of the responsible professional;
- (2) If the client was admitted under Part 3 or Part 4 of this Article to a restrictive facility, discharge the client when the period for continued treatment, as specified by the court, expires;
- (3) If the client was admitted pending a district court hearing under Part 7 of this Article, request that the court consider dismissal or continuance of the case at the initial district court hearing; or
- (4) If the client was committed under Part 7 of this Article, discharge the client when the commitment expires.

(b) As described in G.S. 122C-205(a), when a client of a 24-hour facility who was admitted under Part 8 of this Article escapes or breaches the conditions of his release and does not return to the facility, the facility may discharge the client from the facility based on the professional judgment of the responsible professional and following consultation with the appropriate area authority or physician.

(c) Upon discharge of the client, the 24-hour facility shall notify all the persons directed to be notified of the client's escape or breach of conditional release under 122C-205(a), (b) and (d) that the client has been discharged.

(d) If the client is returned to the 24-hour facility subsequent to discharge from the facility, applicable admission or commitment procedures shall be followed, when appropriate. (1987, c. 674, s. 1.)

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

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

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

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

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

(c) Minors and incompetent adults, admitted pursuant to Parts 3 and 4 of this Article, may be transferred from one 24-hour facility to another following the same procedures specified in subsection (b) of this section. In addition, the legally responsible person shall

be consulted before the proposed transfer and notified, within 24 hours after the transfer is complete, of the location of the transfer and that the transfer is complete. If the transfer is completed before the judicial determination required in G.S. 122C-223 or G.S. 122C-232, these proceedings shall be initiated by the receiving facility.

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

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

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

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

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

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

(f1) When a client is transferred from a 24-hour facility to an acute care hospital solely for medical reasons, the hospital shall return the client to the original facility as soon as the next client space becomes available at the original facility after completion of the client's medical care. With the exception of facility-based crisis centers, the original facility must allow at least 12 hours for the client's return before assigning the client's room or bed to another patient, unless both facilities agree that return of the client in this time period is not feasible. The original facility must accept the return of the client in priority over other clients seeking admission, except in the cases of patients designated incapable to proceed to trial by court order. If the responsible professionals at both facilities concur that discharge of a client who is not subject to G.S. 122C-266(b) is appropriate, the client may be discharged. If, at the time of the transfer, a client is being held under a **custody order** pending a second commitment examination or a district court hearing under involuntary

commitment proceedings, the **custody order** shall remain valid throughout the period of time necessary to complete the client's medical care and transport the client between the 24-hour facility and the acute care hospital; provided, however, that the requirement for a timely hearing under G.S. 122C-268(a) applies. Any decision to terminate the proceedings because the respondent no longer meets the criteria for commitment or because a hearing cannot be held within the time required by G.S. 122C-268(a) shall be documented and reported to the clerk of superior court in accordance with G.S. 122C-266(c).

(g) The Commission may adopt rules to implement this section. (1919, c. 330; C.S., s. 6163; 1925, c. 51, s. 1; 1945, c. 925, s. 5; 1947, c. 537, s. 9; c. 623, s. 1; 1953, c. 675, s. 15; 1955, c. 1274, s. 1; 1959, c. 1002, s. 11; 1963, c. 1166, ss. 10, 12; 1973, c. 475, s. 1; c. 476, s. 133; c. 673, ss. 7, 8; c. 1436, ss. 6, 7; 1977, c. 679, s. 7; 1981, c. 51, s. 3; c. 328, ss. 1, 2; 1985, c. 589, s. 2; 1985 (Reg. Sess., 1986), c. 863, s. 15; 1991, c. 704, s. 1; 2018-33, s. 9.)

#### **§ 122C-207. Confidentiality.**

Court records made in all proceedings pursuant to this Article are confidential, and are not open to the general public except as provided for by G. S. 122C-54(d). (1977, c. 696, s. 1; 1979, c. 164, s. 2; c. 915, s. 20; 1985, c. 589, s. 2.)

#### **§ 122C-208. Voluntary admission not admissible in involuntary proceeding.**

Except when considering treatment history as it pertains to an involuntary outpatient commitment, the fact that an individual has been voluntarily admitted for treatment shall not be competent evidence in an involuntary commitment proceeding. (1985, c. 589, s. 2.)

#### **§ 122C-209. Voluntary admissions acceptance.**

Nothing contained in Parts 2 through 5 of this Article requires a private physician or private facility to accept an individual as a client for examination or treatment. Examination or treatment at a private facility or by a private physician is at the expense of the individual to the extent that charges are not disposed of by contract between the area authority and private facility. (1985, c. 589, s. 2.)

#### **§ 122C-210. Guardian to pay expenses out of estate.**

It is the duty of the guardian who has legal custody of the estate of an incompetent individual held pursuant to the provisions of this Article in a facility to supply funds for his support in the facility during the stay as long as there are sufficient funds for that purpose over and beyond maintaining and supporting those individuals who may be legally dependent on the estate. (1985, c. 589, s. 2.)

#### **§ 122C-210.1. Immunity from liability.**

No facility, person, or entity, including an area facility, a facility licensed under this Chapter, an acute care hospital, a general hospital, an area authority, a law enforcement officer, an LME, or an LME/MCO, or any of their officials, staff, or employees, or any other physician or individual who is responsible for the custody, transportation, examination, admission, management, supervision, treatment, or release of a respondent or



client and who is not grossly negligent, is civilly or criminally liable, personally or otherwise, for that person's or entity's actions or omissions arising from these responsibilities or for the actions or omissions of a respondent or client. This immunity is in addition to any other legal immunity from liability to which these persons, entities, facilities, agencies, or individuals may be entitled and applies to actions performed in connection with, or arising out of, the custody, transportation, examination, commitment, admission, management, supervision, treatment, or release of any individual pursuant to or under the authority of this Article or otherwise. (1899, c. 1, s. 31; Rev., s. 4560; C.S., s. 6172; 1961, c. 511, s. 1; 1973, c. 673, s. 10; 1983, c. 638, s. 15; c. 864, s. 4; 1985, c. 589, s. 2; 1995 (Reg. Sess., 1996), c. 739, s. 3; 2018-33, s. 10.)

#### **§ 122C-210.2. Research at State facilities for the mentally ill.**

(a) For research purposes, State facilities for the mentally ill may be designated by the Secretary as facilities for the voluntary admission of adults who are not admissible as clients otherwise. Designation of these facilities shall be made in accordance with rules of the Secretary that assure the protection of those admitted for research purposes.

(b) Individuals may be admitted to such designated facilities on either an outpatient or inpatient basis.

(c) The Human Rights Committee of the designated facility shall monitor the care of individuals admitted for research during their participation in any research program.

(d) For these individuals admitted to such designated facilities for research purposes only, the following provisions shall apply:

- (1) A written application for admission pursuant to G.S. 122C-211(a) and an examination by a physician within 24 hours of admission shall be provided to each of these individuals;
- (2) They shall be exempt from the provisions of G.S. 122C-57(a) governing the rights to treatment and to a treatment plan; the requirements of G.S. 122C-61(2) and G.S. 122C-212(b); and the requirements of any single portal of entry and exit plan; however, nothing in this section shall take away the individual's right to be informed of the potential risks and alleged benefits of their participation in any research program;
- (3) The Secretary shall exempt these individuals from the provisions of Article 7 of Chapter 143 of the General Statutes requiring payment for treatment in a State institution. The Secretary may also authorize reasonable compensation to be paid to individuals participating in research projects for their services; provided, that the compensation is paid from research grant funds; and
- (4) The Commission shall adopt rules regarding the admission, care and discharge of those individuals admitted for research purposes only. (1987, c. 358, s. 1.)

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

A custody order entered by the clerk or magistrate pursuant to this Chapter may be delivered to the law enforcement officer or other person designated or required to provide

transportation and custody pursuant to G.S. 122C-251 by electronic or facsimile transmission. (2015-176, s. 2.5(b); 2018-33, s. 11.)

Part 2. Voluntary Admissions and Discharges, Competent Adults, Facilities for the Mentally Ill and Substance Abusers.

**§ 122C-211. Admissions.**

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

(b) In 24-hour facilities the application shall acknowledge that the applicant may be held by the facility for a period of 72 hours after any written request for release that the applicant may make, and shall acknowledge that the 24-hour facility may have the legal right to petition for involuntary commitment of the applicant during that period. At the time of application, the facility shall tell the applicant about procedures for discharge.

(c) Any individual who voluntarily seeks admission to a 24-hour facility in which medical care is an integral component of the treatment shall be examined and evaluated by a physician of the facility within 24 hours of admission. The evaluation shall determine whether the individual is in need of treatment for mental illness or substance abuse or further evaluation by the facility. If the evaluating physician determines that the individual will not benefit from the treatment available, the individual shall not be accepted as a client.

(d) Any individual who voluntarily seeks admission to any 24-hour facility, other than one in which medical care is an integral component of the treatment, shall have a medical examination within 30 days before or after admission if it is reasonably expected that the individual will receive treatment for more than 30 days or shall produce a current, valid physical examination report, signed by a physician, completed within 12 months prior to the current admission. When applicable, this examination may be included in an examination conducted to meet the requirements of G.S. 122C-223 or G.S. 122C-232.

- (2) The number of individuals for whom an involuntary commitment proceeding was initiated at the facility, who were referred to a different facility or program.
- (3) The reason for referring the individuals described in subdivision (2) of this section to a different facility or program, including the need for more intensive medical supervision. (2011-346, s. 2; 2018-33, s. 21.)

**§ 122C-256. Reserved for future codification purposes.**

**§ 122C-257. Reserved for future codification purposes.**

**§ 122C-258. Reserved for future codification purposes.**

**§ 122C-259. Reserved for future codification purposes.**

**§ 122C-260. Reserved for future codification purposes.**

Part 7. Involuntary Commitment of the Mentally Ill; Facilities for the Mentally Ill.

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

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

(b) If the clerk or magistrate finds reasonable grounds to believe that the facts alleged in the affidavit are true and that the respondent probably has a mental illness and is either (i) dangerous to self, as defined in G.S. 122C-3(11)a., or dangerous to others, as defined in G.S. 122C-3(11)b., or (ii) in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness, the clerk or magistrate shall issue an order to a law enforcement officer or any other designated person under G.S. 122C-251(g) to take the respondent into custody for examination by a commitment examiner. If the clerk or magistrate finds that, in addition to probably having a mental illness, the respondent also probably has an intellectual disability, the clerk or magistrate shall contact the area authority before issuing a custody order and the area authority shall designate the facility to which the respondent is to be taken for examination

by a commitment examiner. The clerk or magistrate shall provide the petitioner and the respondent, if present, with specific information regarding the next steps that will occur for the respondent.

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

(d) If the affiant is a commitment examiner, all of the following apply:

- (1) If the affiant has examined the respondent, the affiant may execute the affidavit before any official authorized to administer oaths. This affiant is not required to appear before the clerk or magistrate for this purpose. This affiant shall file the affidavit with the clerk or magistrate by delivering to the clerk or magistrate the original affidavit, by transmitting a copy in paper form that is printed through the facsimile transmission of the affidavit, or by delivering the affidavit through electronic transmission. If the affidavit is filed through electronic or facsimile transmission, the affiant shall mail the original affidavit no later than five days after the facsimile transmission of the affidavit to the clerk or magistrate to be filed by the clerk or magistrate with the facsimile copy of the affidavit.
- (2) This affiant's examination shall comply with the requirements of the initial examination as provided in G.S. 122C-263(c). The affiant shall document in writing and file the examination findings with the affidavit delivered to the clerk or magistrate in accordance with subdivision (1) of subsection (d) of this section.
- (3) If the commitment examiner recommends outpatient commitment according to the criteria for outpatient commitment set forth in G.S. 122C-263(d)(1) and the clerk or magistrate finds probable cause to believe that the respondent meets the criteria for outpatient commitment, the clerk or magistrate shall issue an order that a hearing before a district court judge be held to determine whether the respondent will be involuntarily committed. The commitment examiner shall contact the LME/MCO that serves the county where the respondent resides or the LME/MCO that coordinated services for the respondent to inform the LME/MCO that the respondent has been scheduled for an appointment with an outpatient treatment physician or center. The commitment examiner shall provide the respondent with written notice of any scheduled appointment and the name, address, and telephone number of the proposed outpatient treatment physician or center.
- (4) If the commitment examiner recommends inpatient commitment based on the criteria for inpatient commitment set forth in G.S. 122C-263(d)(2) and the clerk or magistrate finds probable cause to believe that the respondent meets the criteria for inpatient commitment, the clerk or magistrate shall issue an order to a law enforcement officer to take the

respondent into custody for transportation to a 24-hour facility described in G.S. 122C-252, provided that if a 24-hour facility is not immediately available or appropriate to the respondent's medical condition, the respondent may be temporarily detained under appropriate supervision and, upon further examination, released in accordance with G.S. 122C-263(d)(2).

- (5) If the affiant is a physician or eligible psychologist at a 24-hour facility described in G.S. 122C-252 who recommends inpatient commitment; the respondent is physically present on the premises of the same 24-hour facility; and the clerk or magistrate finds probable cause to believe that the respondent meets the criteria for inpatient commitment, then the clerk or magistrate may issue an order by facsimile transmission or may issue an electronically scanned order by electronic transmission to the physician or eligible psychologist at the 24-hour facility, or a designee, to take the respondent into custody at the 24-hour facility and proceed according to G.S. 122C-266. Upon receipt of the **custody order**, the physician or eligible psychologist at the 24-hour facility, or a designee, shall immediately (i) notify the respondent that the respondent is not under arrest and has not committed a crime but is being taken into custody to receive treatment and for the respondent's own safety and the safety of others, (ii) take the respondent into custody, and (iii) complete and sign the appropriate portion of the **custody order** and return the order to the clerk or magistrate either by facsimile transmission or by scanning it and sending it by electronic transmission. The physician or eligible psychologist, or a designee, shall mail the original **custody order** no later than five days after returning it by means of facsimile or electronic transmission to the clerk or magistrate. The clerk or magistrate shall file the original **custody order** with the copy of the **custody order** that was electronically returned.

Notwithstanding the provisions of this subdivision, a clerk or magistrate shall not issue a **custody order** to a physician or eligible psychologist at a 24-hour facility, or a designee, if the physician or eligible psychologist, or a designee, has not completed training in proper service and return of service. As used in this subdivision, the term "designee" includes the 24-hour facility's on-site police security personnel.

The Department of Health and Human Services shall cooperate and collaborate with the Administrative Office of the Courts and the UNC School of Government to develop protocols to implement this section, including a procedure for notifying clerks and magistrates of the names of the physicians, psychologists, and designees who have completed the training. The Secretary of the Department shall oversee implementation of these protocols.

1995 (Reg. Sess., 1996), c. 739, s. 6; 1997-456, s. 47; 2004-23, s. 1(a); 2005-135, s. 1; 2009-315, s. 1; 2009-340, s. 1; 2013-308, ss. 1, 2; 2018-33, s. 22; 2019-76, s. 7.)

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

(a) Anyone, including a law enforcement officer, who has knowledge of an individual who is subject to inpatient commitment according to the criteria of G.S. 122C-263(d)(2) and who requires immediate hospitalization to prevent harm to self or others, may transport the individual directly to an area facility or other place, including a State facility for individuals with mental illnesses, for examination by a commitment examiner in accordance with G.S. 122C-263(c).

(b) Upon examination by the commitment examiner, if the individual meets the inpatient commitment criteria specified in G.S. 122C-263(d)(2) and requires immediate hospitalization to prevent harm to self or others, the commitment examiner shall so certify in writing before any official authorized to administer oaths. The certificate shall also state the reason that the individual requires immediate hospitalization. If the commitment examiner knows or has reason to believe that the individual has an intellectual disability, the certificate shall so state.

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

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

In the event an individual known or reasonably believed to have an intellectual disability is transported to a State facility for individuals with mental illnesses, in no event shall that individual be admitted to that facility unless the individual is in one or more of the following categories:

- (1) Persons described in G.S. 122C-266(b).
- (2) Persons admitted pursuant to G.S. 15A-1321.



G.S. 122C-251(g) shall take the respondent to a facility or other location identified by the LME/MCO in the community crisis services plan adopted pursuant to G.S. 122C-202.2 that has an available commitment examiner and is capable of performing a first examination in conjunction with a health screening at the same location, unless circumstances indicate the respondent appears to be suffering a medical emergency in which case the law enforcement officer will seek immediate medical assistance for the respondent. If a commitment examiner is not available, whether on-site, on-call, or via telemedicine, at any facility or location, or if a plan has not been adopted, the person designated to provide transportation shall take the respondent to an alternative non-hospital provider or facility-based crisis center for a first examination in conjunction with a health screening at the same location. If no non-hospital provider or facility-based crisis center for a first examination in conjunction with a health screening at the same location for health screening and first examination exists, the person designated to provide transportation shall take the respondent to a private hospital or clinic, a general hospital, an acute care hospital, or a State facility for individuals with mental illnesses. If a commitment examiner is not immediately available, the respondent may be temporarily detained in an area facility, if one is available; if an area facility is not available, the respondent may be detained under appropriate supervision in the respondent's home, in a private hospital or a clinic, in a general hospital, or in a State facility for individuals with mental illnesses, but not in a jail or other penal facility. For the purposes of this section, "non-hospital provider" means an outpatient provider that provides either behavioral health or medical services.

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

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

- (1) The affiant who obtained the **custody order** is a commitment examiner who recommends inpatient commitment.
- (2) The **custody order** states that the respondent was charged with a violent crime, including a crime involving assault with a deadly weapon, and the respondent was found incapable of proceeding.
- (3) Repealed by Session Laws 1987, c. 596, s. 3.

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

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

The examination shall include an assessment of at least all of the following with respect to the respondent:

- (1) Current and previous mental illness and intellectual disability including, if available, previous treatment history.
- (2) Dangerousness to self, as defined in G.S. 122C-3(11)a. or others, as defined in G.S. 122C-3(11)b.
- (3) Ability to survive safely without inpatient commitment, including the availability of supervision from family, friends, or others.
- (4) Capacity to make an informed decision concerning treatment.

(d) After the conclusion of the examination the commitment examiner shall make the following determinations:

- (1) If the commitment examiner finds all of the following, the commitment examiner shall so show on the examination report and shall recommend outpatient commitment:
  - a. The respondent has a mental illness.
  - b. The respondent is capable of surviving safely in the community with available supervision from family, friends, or others.
  - c. Based on the respondent's psychiatric history, the respondent is in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness as defined by G.S. 122C-3(11).
  - d. The respondent's current mental status or the nature of the respondent's illness limits or negates the respondent's ability to make an informed decision to seek voluntarily or comply with recommended treatment.

In addition, the commitment examiner shall show the name, address, and telephone number of the proposed outpatient treatment physician or center in accordance with subsection (f) of this section. The person



designated in the order to provide transportation shall return the respondent to the respondent's regular residence or, with the respondent's consent, to the home of a consenting individual located in the originating county, and the respondent shall be released from custody.

- (2) If the commitment examiner finds that the respondent has a mental illness and is dangerous to self, as defined in G.S. 122C-3(11)a., or others, as defined in G.S. 122C-3(11)b., the commitment examiner shall recommend inpatient commitment, and shall so show on the examination report. If, in addition to mental illness and dangerousness, the commitment examiner also finds that the respondent is known or reasonably believed to have an intellectual disability, this finding shall be shown on the report. Upon notification, the law enforcement officer or other designated person shall take the respondent to a 24-hour facility described in G.S. 122C-252 pending a district court hearing. To the extent feasible, in providing the transportation of the respondent, the law enforcement officer shall act within six hours of notification. The other designated person shall take the respondent to a 24-hour facility described in G.S. 122C-252 pending a district court hearing within six hours of notification. If there is no area 24-hour facility and if the respondent is indigent and unable to pay for care at a private 24-hour facility, the law enforcement officer or other designated person shall take the respondent to a State facility for individuals with mental illnesses designated by the Commission in accordance with G.S. 143B-147(a)(1)a. for custody, observation, and treatment and immediately notify the clerk of superior court of this action. If a 24-hour facility is not immediately available or appropriate to the respondent's medical condition, the respondent may be temporarily detained under appropriate supervision at the site of the first examination. Upon the commitment examiner's determination that a 24-hour facility is available and medically appropriate, the law enforcement officer or other designated person shall transport the respondent after receiving a request for transportation by the facility of the commitment examiner. To the extent feasible, in providing the transportation of the respondent, the law enforcement officer shall act within six hours of notification. The other designated person shall transport the respondent without unnecessary delay and within six hours after receiving a request for transportation by the facility of the commitment examiner. At any time during the respondent's temporary detention under appropriate supervision, if a commitment examiner determines that the respondent is no longer in need of inpatient commitment, the proceedings shall be terminated and the respondent transported and released in accordance with subdivision (3) of this subsection. However, if the commitment examiner determines that the respondent meets the criteria for outpatient commitment, as defined in

subdivision (1) of this subsection, the commitment examiner may recommend outpatient commitment, and the respondent shall be transported and released in accordance with subdivision (1) of this subsection. Any decision to terminate the proceedings or to recommend outpatient commitment after an initial recommendation of inpatient commitment shall be documented and reported to the clerk of superior court in accordance with subsection (e) of this section. If the respondent is temporarily detained and a 24-hour facility is not available or medically appropriate seven days after the issuance of the **custody order**, a commitment examiner shall report this fact to the clerk of superior court and the proceedings shall be terminated. Termination of proceedings pursuant to this subdivision shall not prohibit or prevent the initiation of new involuntary commitment proceedings when appropriate. A commitment examiner may initiate a new involuntary commitment proceeding prior to the expiration of this seven-day period, as long as the respondent continues to meet applicable criteria. Affidavits filed in support of proceedings terminated pursuant to this subdivision shall not be submitted in support of any subsequent petitions for involuntary commitment. If the affiant initiating new commitment proceedings is a commitment examiner, the affiant shall conduct a new examination and shall not rely upon examinations conducted as part of proceedings terminated pursuant to this subdivision.

In the event an individual known or reasonably believed to have an intellectual disability is transported to a State facility for individuals with mental illnesses, in no event shall that individual be admitted to that facility unless the individual is in one or more of the following categories:

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

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

1987, c. 596, s. 2; 1991, c. 37, s. 4; 1995 (Reg. Sess., 1996), c. 739, s. 9; 2017-158, s. 21; 2018-33, s. 26.)

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

(a) If a respondent, who has been recommended for outpatient commitment by [a] commitment examiner different from the proposed outpatient treatment physician or center, fails to appear for examination by the proposed outpatient treatment physician or center at the designated time, the physician or center shall notify the clerk of superior court who shall issue an order to a law enforcement officer to take the respondent into custody and take him immediately to the outpatient treatment physician or center for evaluation. The **custody order** is valid throughout the State. The law-enforcement officer may wait during the examination and return the respondent to his home after the examination.

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

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

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

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

(f) If an inpatient commitment proceeding is initiated pending the hearing for outpatient commitment and the respondent is admitted to a 24-hour facility to be held for an inpatient commitment hearing, notice shall be sent by the clerk of court in the county where the respondent is being held to the clerk of court of the county where the outpatient commitment was initiated and the outpatient commitment proceeding shall be terminated. (1983, c. 638, s. 11; c. 864, s. 4; 1985, c. 589, s. 2; c. 695, s. 6; 1989 (Reg. Sess., 1990), c. 823, s. 5; 1991, c. 636, s. 2(2); c. 761, s. 49; 2004-23, s. 2(a); 2018-33, s. 27.)

**§ 122C-266. Inpatient commitment; second examination and treatment pending hearing.**

(a) Except as provided in subsections (b) and (e), within 24 hours of arrival at a 24-hour facility described in G.S. 122C-252, the respondent shall be examined by a physician. This physician shall not be the same physician who completed the certificate or examination under the provisions of G.S. 122C-262 or G.S. 122C-263. The examination shall include but is not limited to the assessment specified in G.S. 122C-263(c).

(1) If the physician finds that the respondent is mentally ill and is dangerous to self, as defined by G.S. 122C-3(11)a., or others, as defined by G.S.

122C-3(11)b., the physician shall hold the respondent at the facility pending the district court hearing.

- (2) If the physician finds that the respondent meets the criteria for outpatient commitment under G.S. 122C-263(d)(1), the physician shall show these findings on the physician's examination report, release the respondent pending the district court hearing, and notify the clerk of superior court of the county where the petition was initiated of these findings. In addition, the examining physician shall show on the examination report the name, address, and telephone number of the proposed outpatient treatment physician or center. The physician shall give the respondent a written notice listing the name, address, and telephone number of the proposed outpatient treatment physician or center and directing the respondent to appear at that address at a specified date and time. The examining physician before the appointment shall notify by telephone and shall send a copy of the notice and the examination report to the proposed outpatient treatment physician or center.
- (3) If the physician finds that the respondent does not meet the criteria for commitment under either G.S. 122C-263(d)(1) or G.S. 122C-263(d)(2), the physician shall release the respondent and the proceedings shall be terminated.
- (4) If the respondent is released under subdivisions (2) or (3) of this subsection, the law enforcement officer or other person designated to provide transportation shall return the respondent to the respondent's residence in the originating county or, if requested by the respondent, to another location in the originating county.

(b) If the **custody order** states that the respondent was charged with a violent crime, including a crime involving assault with a deadly weapon, and that he was found incapable of proceeding, the physician shall examine him as set forth in subsection (a) of this section. However, the physician may not release him from the facility until ordered to do so following the district court hearing.

(c) The findings of the physician and the facts on which they are based shall be in writing, in all cases. A copy of the findings shall be sent to the clerk of superior court by reliable and expeditious means.

(d) Pending the district court hearing, the physician attending the respondent may administer to the respondent reasonable and appropriate medication and treatment that is consistent with accepted medical standards. Except as provided in subsection (b) of this section, if at any time pending the district court hearing, the attending physician determines that the respondent no longer meets the criteria of either G.S. 122C-263(d)(1) or (d)(2), he shall release the respondent and notify the clerk of court and the proceedings shall be terminated.

(e) If the 24-hour facility described in G.S. 122C-252 or G.S. 122C-262 is the facility in which the first examination by a physician or eligible psychologist occurred and is the same facility in which the respondent is held, the second examination shall occur not later than the following regular working day. (1973, c. 726, s. 1; c. 1408, s. 1; 1977, c. 400, s. 6; 1979, c. 915, s. 6; 1983,

a respondent temporarily detained under G.S. 122C-263(d)(2) is subject to a series of successive **custody orders** issued pursuant to G.S. 122C-263(d)(2), the hearing shall be held within 10 days after the day that the respondent is taken into custody under the most recent **custody order**. A continuance of not more than five days may be granted upon motion of any of the following:

- (1) The court.
- (2) Respondent's counsel.
- (3) The State, sufficiently in advance to avoid movement of the respondent.

(b) The attorney, who is a member of the staff of the Attorney General assigned to one of the State's facilities for the mentally ill or the psychiatric service of the University of North Carolina Hospitals at Chapel Hill, shall represent the State's interest at commitment hearings, rehearings, and supplemental hearings held for respondents admitted pursuant to this Part or G.S. 15A-1321 at the facility to which he is assigned.

In addition, the Attorney General may, in his discretion, designate an attorney who is a member of his staff to represent the State's interest at any commitment hearing, rehearing, or supplemental hearing held in a place other than at one of the State's facilities for the mentally ill or the psychiatric service of the University of North Carolina Hospitals at Chapel Hill.

(c) If the respondent's **custody order** indicates that he was charged with a violent crime, including a crime involving an assault with a deadly weapon, and that he was found incapable of proceeding, the clerk shall give notice of the time and place of the hearing as provided in G.S. 122C-264(d). The district attorney in the county in which the respondent was found incapable of proceeding may represent the State's interest at the hearing.

(d) The respondent shall be represented by counsel of his choice; or if he is indigent within the meaning of G.S. 7A-450 or refuses to retain counsel if financially able to do so, he shall be represented by counsel appointed in accordance with rules adopted by the Office of Indigent Defense Services.

(e) With the consent of the court, counsel may in writing waive the presence of the respondent.

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

(g) To the extent feasible, hearings shall be held in an appropriate room at the facility in which the respondent is being treated in a manner approved by the chief district court judge if the facility is located within the presiding judge's district court district as defined in G.S. 7A-133. Hearings may be held in the judge's chambers. A hearing may not be held in a regular courtroom, over objection of the respondent, if in the discretion of a judge a more suitable place is available. A hearing may be held by audio and video transmission between the treatment facility and a courtroom in a manner that allows (i) the judge and the respondent to see and hear each other and (ii) the respondent to communicate fully and confidentially with the respondent's counsel during the proceeding. Prior to any hearing held by audio and video transmission, the chief district court judge shall submit to the Administrative Office of the Courts the procedures and type of equipment for audio

ordered by the Court of Appeals. The Attorney General represents the State's interest on appeal. The district court retains limited jurisdiction for the purpose of hearing all reviews, rehearings, or supplemental hearings allowed or required under this Part. (1973, c. 726, s. 1; c. 1408, s. 1; 1979, c. 915, s. 19; 1985, c. 589, s. 2; 2009-570, s. 27.)

**§ 122C-273. Duties for follow-up on commitment order.**

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

- (1) If the respondent fails to comply or clearly refuses to comply with all or part of the prescribed treatment, the physician, the physician's designee, or the center shall make all reasonable effort to solicit the respondent's compliance. These efforts shall be documented and reported to the court with a request for a supplemental hearing.
- (2) If the respondent fails to comply, but does not clearly refuse to comply, with all or part of the prescribed treatment after reasonable effort to solicit the respondent's compliance, the physician, the physician's designee, or the center may request the court to order the respondent taken into custody for the purpose of examination. Upon receipt of this request, the clerk shall issue an order to a law-enforcement officer to take the respondent into custody and to take him immediately to the designated outpatient treatment physician or center 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 center who shall conduct the examination and then release the respondent. The law-enforcement officer may wait during the examination and return the respondent to his home after the examination. An examination conducted under this subsection in which a physician or eligible psychologist determines that the respondent meets the criteria for inpatient commitment may be substituted for the first examination required by G.S. 122C-263 if the clerk or magistrate issues a **custody order** within six hours after the examination was performed.
- (3) In no case may the respondent be physically forced to take medication or forcibly detained for treatment unless he poses an immediate danger to himself or others. In such cases inpatient commitment proceedings shall be initiated.
- (4) At any time that the outpatient treatment physician or center finds that the respondent no longer meets the criteria set out in G.S. 122C-263(d)(1), the physician or center shall so notify the court and the case shall be terminated; provided, however, if the respondent was initially committed as a result of conduct resulting in his being charged with a violent crime, including a crime involving an assault with a deadly weapon, and the respondent was found incapable of proceeding, the designated outpatient



furnished to the clerk of superior court of the county of commitment and of the county in which the facility is located.

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

(b1) If the respondent was initially committed pursuant to G.S. 15A-1321, 15 days before the respondent's discharge or conditional release the attending physician shall notify the clerk of superior court. The clerk shall calendar a hearing and shall give notice as provided by G.S. 122C-264(d1). The district attorney for the original trial may represent the State's interest at the hearing. The hearing shall be conducted under the standards and procedures set forth in G.S. 122C-268.1. Provided, that in no event shall discharge or conditional release under this section be allowed for a respondent during the period from automatic commitment to hearing under G.S. 122C-268.1.

(c) If a committed respondent under subsections (a), (b), or (b1) of this section is from a single portal area, the attending physician shall plan jointly with the area authority as prescribed in the area plan before discharging or releasing the respondent. (1973, c. 726, s. 1; c. 1408, s. 1; 1981, c. 537, s. 5; 1983, c. 383, s. 6; c. 638, s. 21; c. 864, s. 4; 1985, c. 589, s. 2; 1991, c. 37, s. 6.)

#### **§ 122C-278. Reexamination for capacity to proceed prior to discharge.**

Whenever a respondent has been committed to either inpatient or outpatient treatment pursuant to this Chapter after having been found incapable of proceeding and referred by the court for civil commitment proceedings, the respondent shall not be discharged from the custody of the hospital or institution or the outpatient commitment case terminated until the respondent has been examined for capacity to proceed and a report filed with the clerk of court pursuant to G.S. 15A-1002. (2013-18, s. 8.)

**§ 122C-279:** Reserved for future codification purposes.

**§ 122C-280:** Reserved for future codification purposes.

#### **Part 8. Involuntary Commitment of Substance Abusers, Facilities for Substance Abusers.**

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

(a) Any individual who has knowledge of a substance abuser who is dangerous to self or others may appear before a clerk or assistant or deputy clerk of superior court or a magistrate, execute an affidavit to this effect, and petition the clerk or magistrate for issuance of an order to take the respondent into custody for examination by a commitment examiner. The affidavit shall include the facts on which the affiant's opinion is based.

Jurisdiction under this subsection is in the clerk or magistrate in the county where the respondent resides or is found.

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

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

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

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

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

(f) Repealed by Session Laws 2018-33, s. 32, effective October 1, 2019. (1973, c. 726, s. 1; c. 1408, s. 1; 1977, c. 400, s. 3; 1979, c. 164, s. 2; c. 915, ss. 3, 18; 1983, c. 383, s. 5; c. 638, ss. 3-5; c. 864, s. 4; 1985, c. 589, s. 2; c. 695, ss. 2, 4; 2004-23, s. 1(b); 2018-33, s. 32.)



- (1) The affiant who obtained the **custody order** is a physician or eligible psychologist; or
- (2) The respondent is in custody under the special emergency procedure described in G.S. 122C-282.

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

(c) The commitment examiner described in subsection (a) of this section shall examine the respondent as soon as possible, and in any event within 24 hours, after the respondent is presented for examination. The examination shall include but is not limited to an assessment of all of the following:

- (1) The respondent's current and previous substance abuse including, if available, previous treatment history.
- (2) The respondent's dangerousness to self or others as defined in G.S. 122C-3(11).

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

- (1) If the physician or eligible psychologist finds that the respondent is a substance abuser and is dangerous to himself or others, he shall recommend commitment and whether the respondent should be released or be held at a 24-hour facility pending hearing and shall so show on [the] his examination report. Based on the physician's or eligible psychologist's recommendation the law-enforcement officer or other designated individual shall take the respondent to a 24-hour facility described in G.S. 122C-252 or release the respondent.
- (2) If the physician or eligible psychologist finds that the condition described in subdivision (1) of this subsection does not exist, the respondent shall be released and the proceedings terminated.

(e) The findings of the physician or eligible psychologist and the facts on which they are based shall be in writing in all cases. A copy of the findings shall be sent to the clerk of superior court by the most reliable and expeditious means. If it cannot be reasonably anticipated that the clerk will receive the copy within 48 hours of the time that it was signed, the physician or eligible psychologist shall also communicate his findings to the clerk by telephone. (1973, c. 726, s. 1; c. 1408, s. 1; 1977, c. 400, s. 4; c. 679, s. 8; c. 739, s. 1; 1979, c. 358, s. 27; c. 915, s. 4; 1983, c. 380, ss. 4, 10; c. 638, ss. 6, 7, 25.1; c. 864, s. 4; 1985, c. 589, s. 2; c. 695, ss. 2, 9; 2018-33, s. 34; 2018-76, s. 3.2(b); 2019-177, s. 7(b).)

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

(a) Upon receipt by the clerk of superior court of a finding made by a commitment examiner or other qualified professional pursuant to G.S. 122C-285(c) that a respondent is a substance abuser and dangerous to self or others and that commitment is recommended, the clerk of superior court of the county where the facility is located, if the respondent is

held in a 24-hour facility, or the clerk of superior court where the petition was initiated shall upon direction of a district court judge assign counsel, calendar the matter for hearing, and notify the respondent, the respondent's counsel, and the petitioner of the time and place of the hearing. The petitioner or respondent, directly, or through counsel, may file a written waiver of the right to notice under this subsection with the clerk of court.

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

(c) Upon receipt of notice that transportation is necessary to take a committed respondent to a 24-hour facility pursuant to G.S. 122C-290(b), the clerk shall issue a **custody order** for the respondent.

(d) The clerk of superior court shall upon the direction of a district court judge calendar all hearings, supplemental hearings, and rehearings and provide all notices required by this Part. (1973, c. 1408, s. 1; 1977, c. 400, s. 5; c. 414, s. 1; 1979, c. 915, s. 5; 1983, c. 380, s. 9; c. 638, s. 8; c. 864, s. 4; 1985, c. 589, s. 2; c. 695, s. 10; 1985 (Reg. Sess., 1986), c. 863, s. 27; 2018-33, s. 35.)

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

(a) Within 24 hours of arrival at a 24-hour facility described in G.S. 122C-252, the respondent shall be examined by a qualified professional. This professional shall be a physician if the initial commitment evaluation was conducted by a commitment examiner who is not a physician. The examination shall include the assessment specified in G.S. 122C-283(c). If the physician or qualified professional finds that the respondent is a substance abuser and is dangerous to self or others, the physician or qualified professional shall hold and treat the respondent at the facility or designate other treatment pending the district court hearing. If the physician or qualified professional finds that the respondent does not meet the criteria for commitment under G.S. 122C-283(d)(1), the physician or qualified professional shall release the respondent and the proceeding shall be terminated. In this case the reasons for the release shall be reported in writing to the clerk of superior court of the county in which the **custody order** originated. If the respondent is released, the law enforcement officer or other person designated or required under G.S. 122C-251(g) to provide transportation shall return the respondent to the originating county.

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

(c) The findings of the physician or qualified professional along with a summary of the facts on which they are based shall be made in writing in all cases. A copy of the written findings shall be sent to the clerk of superior court by reliable and expeditious means. (1973, c. 726, s. 1; c. 1408, s. 1; 1977, c. 400, s. 6; 1979, c. 915, s. 6; 1983, c. 380, s. 5; c.

638, ss. 9, 10; c. 864, s. 4; 1985, c. 589, s. 2; c. 695, s. 11; 1985 (Reg. Sess., 1986), c. 863, s. 28; 2018-33, s. 36.)

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

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

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

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

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

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

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

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

(h) To support a commitment order, the court shall find by clear, cogent, and convincing evidence that the respondent meets the criteria specified in G.S. 122C-283(d)(1). The court shall record the facts that support its findings and shall show on the order the area facility or physician who is responsible for the management and supervision of the respondent's treatment. (1985, c. 589, s. 2; c. 695, s. 8; 1985 (Reg. Sess., 1986), c. 863, ss. 29, 30; 1987 (Reg. Sess., 1988), c. 1037, s. 117; 2000-144, s. 43; 2018-33, s. 37.)

appointed in accordance with rules adopted by the Office of Indigent Defense Services. (1973, c. 1408, s. 1; 1985, c. 589, s. 2; 2006-264, s. 61(b).)

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

(a) The area 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 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 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 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 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 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 facility or physician shall notify the clerk of superior court of the county where the commitment is supervised and the commitment shall be terminated. (1983, c. 638, s. 16; c. 864, s. 4; 1985, c. 589, s. 2; 1985 (Reg. Sess., 1986), c. 863, s. 32; 1987, c. 674, s. 2; c. 750; 2004-23, s. 2(c); 2018-33, s. 39.)

**§ 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 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 determines that the respondent continues to meet the