

GENERAL ASSEMBLY OF NORTH CAROLINA
1995 SESSION

CHAPTER 249
SENATE BILL 775

AN ACT TO DEFINE CLIENTS ELIGIBLE FOR WILLIE M. SERVICES, TO AUTHORIZE THE ADOPTION OF RULES TO DETERMINE ELIGIBILITY, TO ENSURE THE PROVISION OF SERVICES, AND TO PROVIDE FOR CONTESTED CASE HEARING PROVISION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 122C-3 is amended by redesignating existing subdivision (13a) as subdivision (13a1) and by inserting before it a new subdivision (13a) to read:

"(13a) 'Eligible assaultive and violent children' means children who are citizens of North Carolina and:

- a. Who suffer from emotional, mental, or neurological handicaps that have been accompanied by behavior that is characterized as violent or assaultive; and
- b. Who are involuntarily institutionalized or otherwise placed in residential programs, including:
 1. Minors who are mentally ill as defined by G.S. 122C-3(21) and who are admitted for evaluation or treatment to a treatment facility under Article 5 of Chapter 122C of the General Statutes or are presented for admission and denied due to their behaviors or handicapping conditions;
 2. Minors who are referred to an area mental health, developmental disabilities, and substance abuse authority pursuant to G.S. 7A-647(3) for whom residential treatment or placement is recommended;
 3. Minors who are placed in residential programs as a condition of probation pursuant to G.S. 7A-649(8);
 4. Minors who are ordered to a professional residential treatment program pursuant to G.S. 7A-649(6); and
 5. Minors committed to the custody of the Division of Youth Services pursuant to G.S. 7A-649(10); and
- c. For whom the State has not provided appropriate treatment and educational programs."

Sec. 2. G.S. 122C-112(a) is amended by adding a new subdivision to read:

"(14) Adopt rules to be followed in the determination of eligibility for, and to ensure the provision of services for, eligible assaultive and violent children as defined in G.S. 122C-3(13a)."

Sec. 3. Article 4 of Chapter 122C of the General Statutes is amended by adding a new Part to read:

"Part 7. Contested Case Hearings for Eligible Assaultive and Violent Children.

"§ 122C-194. Declaration of policy.

It is the State's policy to provide procedures for the contested case hearing for an eligible assaultive and violent child, as defined in G.S. 122C-3(13a) and to his or her parent, advocate, or legal guardian. Such procedures shall also be available to any child who has been determined ineligible for services for eligible assaultive and violent children and to his or her parent, advocate, or legal guardian for purposes of appealing the denial of eligibility.

"§ 122C-195. Scope and effect.

(a) The parent, guardian, or advocate may obtain review of proposed decisions on the following grounds:

- (1) The child has not been identified and evaluated or has been incorrectly identified and evaluated;
- (2) The child's Individual Habilitation Plan (I.H.P.), services, or placement are not appropriate to meet the child's needs;
- (3) The plan is not being implemented;
- (4) The services provided are other than those specified in the service plan, are not provided with sufficient intensity or continuity to meet the child's needs, or have not been initiated or provided in a timely, regular, or competent manner; or
- (5) The child's needs and capabilities have not been timely, thoroughly, or accurately assessed.

(b) A local or State agency may obtain review as provided by this section if a parent, guardian, or advocate refuses to consent to the evaluation of the child.

(c) Except as otherwise provided in this section, the administrative review shall be initiated and conducted in accordance with Article 3 of Chapter 150B of the General Statutes, the Administrative Procedure Act. The hearing shall be closed to the public unless the parent, guardian, or advocate requests in writing that the hearing be open to the public.

"§ 122C-196. Prior notice.

(a) Written notice shall be given to the parent, guardian, or advocate of an eligible assaultive and violent child, within a reasonable time before the local or State agency:

- (1) Proposes to initiate or change the identification/eligibility, evaluation/assessment, I.H.P., treatment provisions, services, or placement of the child; or
- (2) Refuses to initiate or change the identification/eligibility, evaluation/assessment, I.H.P., treatment provisions, services, or

placement requested by the parent, guardian, or advocate on behalf of a child.

(b) The specific form and content of the notice shall be governed by rules adopted by the Secretary but shall include:

- (1) A full explanation of all procedural safeguards including the right to mediation, impartial contested case hearing rights (administrative review), the opportunity to examine records, an independent evaluation, confidentiality, and the right to be represented by counsel;
- (2) A description of the action proposed or refused by the local or State agency, an explanation of why the agency proposed or refused to take the action, and a description of any options the agency considered and the reasons why those options were rejected; and
- (3) A description of each evaluation procedure, test, record, or report the local or State agency uses as a basis for the proposal, refusal, or denial.

(c) The local or State agency shall document that the notice has been sent to and received by the parent, guardian, or advocate.

"§ 122C-197. Mediation.

(a) Prior to the filing of a petition for contested case review, mediation of disputes is voluntary but encouraged.

(b) When such a request for mediation has been made by the parent, guardian, or advocate, the director of the area authority or the director of the designated lead agency shall meet, or designate an assistant or associate to meet, with the parent, guardian, or advocate, the local interagency committee, and the regional consultant/service manager for the Department of Public Instruction and the Department of Human Resources to mediate the dispute.

(c) The meeting shall be informal and nonadversarial, as required by G.S. 150B-22.

(d) Mediation of the disagreement shall occur within 10 working days of the initiation of the mediation process by the parent, guardian, or advocate. If successful mediation does not occur within 10 working days, the parent, guardian, or advocate may file a written petition with the Office of Administrative Hearings for a contested case hearing in accordance with G.S. 150B-23.

"§ 122C-198. Decision of the administrative law judge.

Following the contested case hearing, the administrative law judge shall make a decision regarding the issues set forth in G.S. 122C-195(a). The decision shall contain findings of fact and conclusions of law. Notwithstanding the provisions of Chapter 150B of the General Statutes, the decision of the administrative law judge becomes final and not subject to further review unless appealed to the Review Officer as provided in G.S. 122C-199. A copy of the administrative law judge's decision shall be served upon each party, and a copy shall be furnished to the attorneys of record. The written notice shall contain a statement informing the parties of the availability of appeal and the 30-day limitations period for appeal, as set forth in Chapter 150B of the General Statutes.

"§ 122C-199. Administrative review by Review Officer.

(a) When there is an appeal by either party of the decision of the administrative law judge, an impartial Review Officer for the review will be appointed by the Secretary of the Department of Human Resources.

(b) The Review Officer shall be selected from a pool of review officers who have been approved, meet qualifications, and perform a review pursuant to rules adopted by the Secretary for this purpose.

(c) If the Review Officer decides to hold a hearing to receive additional evidence, all rights prescribed by Chapter 150B of the General Statutes to an administrative hearing apply.

(d) The decision of the Review Officer shall contain findings of fact and conclusions of law and becomes final unless an aggrieved party brings a civil action pursuant to Article 4 of Chapter 150B of the General Statutes. A copy of the decision shall be served upon each party, and a copy shall be furnished to the attorneys of record. The written notice shall contain a statement informing the parties of the right to file a civil action and the 30-day limitations period for filing a civil action pursuant to Article 4 of Chapter 150B of the General Statutes.

(e) Any party aggrieved by the decision of the Review Officer may file a petition for judicial review under Chapter 150B of the General Statutes in State court within 30 days after receipt of notice of the decision.

"§ 122C-200. Enforcing decision.

The Secretary shall implement the final decision of the administrative law judge, if not appealed pursuant to G.S. 122C-199 or the final decision of the review, by ordering the local or State agency:

(1) To make a child eligible for class membership; and/or

(2) To provide a child with appropriate services."

Sec. 4. G.S. 150B-1(e) is amended by adding a new subdivision to read:

"(11) Hearings that are provided by the Department of Human Resources regarding the eligibility and provision of services for eligible assaultive and violent children, as defined in G.S. 122C-3(13a), shall be conducted pursuant to the provisions outlined in G.S. 122C, Article 4, Part 7."

Sec. 5. Rules adopted for Willie M. class members prior to the effective date of this act remain in effect until amended or repealed by rules adopted for eligible assaultive and violent children, as defined in this act.

Sec. 6. This act becomes effective July 1, 1995.

In the General Assembly read three times and ratified this the 14th day of June, 1995.

Dennis A. Wicker
President of the Senate

Harold J. Brubaker
Speaker of the House of Representatives