

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

H

D

HOUSE DRH40052-LN-71 (2/9)

Short Title: Mental Health/Law Enforcement Custody. (Public)

Sponsors: Representative Insko.

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO CLARIFY THE TRANSPORTATION AND CUSTODY REQUIREMENTS  
3 WHEN LAW ENFORCEMENT OFFICERS TRANSPORT AN INDIVIDUAL  
4 PURSUANT TO INVOLUNTARY COMMITMENT PROCEEDINGS.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 122C-251 reads as rewritten:

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

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

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

25 (c) Transportation of a respondent may be by city- or county-owned vehicles or by  
26 private vehicle by contract with the city or county. To the extent feasible, law enforcement  
27 officers transporting respondents shall dress in plain clothes and shall travel in unmarked  
28 vehicles. Further, law enforcement officers, to the extent possible, shall advise respondents  
29 when taking them into custody that they are not under arrest and have not committed a crime,  
30 but are being taken into custody and transported to receive treatment and for their own safety  
31 and that of others.

32 (d) In providing transportation of a respondent, a city or county shall provide a driver or  
33 attendant who is the same sex as the respondent, unless the law-enforcement officer allows a  
34 family member of the respondent to accompany the respondent in lieu of an attendant of the  
35 same sex as the respondent.



1 (e) In providing the transportation and custody required by this section, the  
2 law-enforcement officer may use reasonable force to restrain the respondent if it appears  
3 necessary to protect himself, the respondent, or others. No law-enforcement officer may be held  
4 criminally or civilly liable for assault, false imprisonment, or other torts or crimes on account  
5 of reasonable measures taken under the authority of this Article.

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

13 (g) The governing body of a city or county may adopt a plan for the transportation and  
14 custody of respondents in involuntary commitment proceedings in this Article.  
15 Law-enforcement personnel, volunteers, or other public or private agency personnel may be  
16 designated to provide all or parts of the transportation and custody required by involuntary  
17 commitment proceedings. Persons so designated shall be trained and the plan shall assure  
18 adequate safety and protections for both the public and the respondent. Law enforcement, other  
19 affected agencies, and the area authority shall participate in the planning. If any person other  
20 than a law-enforcement agency is designated by a city or county, the person so designated shall  
21 provide the transportation and follow the procedures in this Article. References in this Article  
22 to a law-enforcement officer apply to this person.

23 (h) The cost and expenses of transporting a respondent to or from a 24-hour facility is  
24 the responsibility of the county of residence of the respondent. The State (when providing  
25 transportation under G.S. 122C-408(b)), a city, or a county is entitled to recover the reasonable  
26 cost of transportation from the county of residence of the respondent. The county of residence  
27 of the respondent shall reimburse the State, another county, or a city the reasonable  
28 transportation costs incurred as authorized by this subsection. The county of residence of the  
29 respondent is entitled to recover the reasonable cost of transportation it has paid to the State, a  
30 city, or a county. Provided that the county of residence provides the respondent or other  
31 individual liable for the respondent's support a reasonable notice and opportunity to object to  
32 the reimbursement, the county of residence of the respondent may recover that cost from:

- 33 (1) The respondent, if the respondent is not indigent;
- 34 (2) Any person or entity that is legally liable for the resident's support and  
35 maintenance provided there is sufficient property to pay the cost;
- 36 (3) Any person or entity that is contractually responsible for the cost; or
- 37 (4) Any person or entity that otherwise is liable under federal, State, or local law  
38 for the cost."

39 **SECTION 2.** G.S. 122C-263(d) reads as rewritten:

40 **"§ 122C-263. Duties of law-enforcement officer; first examination by physician or eligible**  
41 **psychologist.**

42 ...

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

- 45 (1) If the physician or eligible psychologist finds that:
  - 46 a. The respondent is mentally ill;
  - 47 b. The respondent is capable of surviving safely in the community with  
48 available supervision from family, friends, or others;
  - 49 c. Based on the respondent's psychiatric history, the respondent is in  
50 need of treatment in order to prevent further disability or

1 deterioration that would predictably result in dangerousness as  
2 defined by G.S. 122C-3(11); and

- 3 d. The respondent's current mental status or the nature of the  
4 respondent's illness limits or negates the respondent's ability to make  
5 an informed decision to seek voluntarily or comply with  
6 recommended treatment.

7 The physician or eligible psychologist shall so show on the examination  
8 report and shall recommend outpatient commitment. In addition the  
9 examining physician or eligible psychologist shall show the name, address,  
10 and telephone number of the proposed outpatient treatment physician or  
11 center. The person designated in the order to provide transportation shall  
12 return the respondent to the respondent's regular residence or, with the  
13 respondent's consent, to the home of a consenting individual located in the  
14 originating county, and the respondent shall be released from custody.

- 15 (2) If the physician or eligible psychologist finds that the respondent is mentally  
16 ill and is dangerous to self, as defined in G.S. 122C-3(11)a., or others, as  
17 defined in G.S. 122C-3(11)b., the physician or eligible psychologist shall  
18 recommend inpatient commitment, and shall so show on the examination  
19 report. If, in addition to mental illness and dangerousness, the physician or  
20 eligible psychologist also finds that the respondent is known or reasonably  
21 believed to be mentally retarded, this finding shall be shown on the report.  
22 The law enforcement officer or other designated person shall take the  
23 respondent to a 24-hour facility described in G.S. 122C-252 pending a  
24 district court hearing. If there is no area 24-hour facility and if the  
25 respondent is indigent and unable to pay for care at a private 24-hour  
26 facility, the law enforcement officer or other designated person shall take the  
27 respondent to a State facility for the mentally ill designated by the  
28 Commission in accordance with G.S. 143B-147(a)(1)a. for custody,  
29 observation, and treatment and immediately notify the clerk of superior court  
30 of this action.

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

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

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

50 No later than 24 hours after the transfer, the responsible professional at  
51 the original facility shall notify the petitioner, the clerk of court, and, if

1 consent is granted by the respondent, the next of kin, that the transfer has  
2 been completed.

3 (3) If the physician or eligible psychologist finds that neither condition  
4 described in subdivisions (1) or (2) of this subsection exists, the proceedings  
5 shall be terminated. The person designated in the order to provide  
6 transportation shall return the respondent to the respondent's regular  
7 residence or, with the respondent's consent, to the home of a consenting  
8 individual located in the originating county and the respondent shall be  
9 released from custody.

10 (4) If, in addition to recommending inpatient commitment, the physician or  
11 eligible psychologist also finds that the respondent is in need of medical  
12 evaluation or treatment prior to transport to a 24-hour facility described in  
13 G.S. 122C-252, the law enforcement officer or other person authorized  
14 under G.S. 122C-251(g) shall take the respondent to a licensed medical  
15 hospital for evaluation and treatment not to exceed five days. This hospital  
16 may be the same hospital where the first commitment examination is  
17 performed. During the five-day period, the custody order remains in effect,  
18 custody shall be maintained pursuant to a plan adopted in accordance with  
19 G.S. 122C-251(g), and the respondent shall be transported to a 24-hour  
20 facility described in G.S. 122C-252 as soon as the respondent can be safely  
21 transported to and received by the 24-hour facility. If the attending physician  
22 at the licensed medical hospital determines that the respondent's need for  
23 medical evaluation or treatment will exceed five days, the physician shall  
24 notify the clerk of court, and the commitment proceedings shall be  
25 terminated. If, during or following the administration of medical evaluation  
26 or treatment, a physician or eligible psychologist determines that the  
27 respondent no longer meets the criteria for inpatient commitment, the  
28 physician or eligible psychologist shall notify the clerk of superior court in  
29 accordance with subsection (e) of this section that either the commitment  
30 proceedings should be terminated or that a hearing should be scheduled to  
31 determine whether an outpatient commitment order should be issued. This  
32 physician shall not be the same physician who completed the first  
33 examination recommending commitment.

34 ...."

35 **SECTION 3.** This act becomes effective October 1, 2009.