

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 794

Short Title: Sex Offender/Incapacity to Proceed. (Public)

Sponsors: Senator Rand.

Referred to: Judiciary I.

March 25, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE CIVIL COMMITMENT OF CERTAIN SEX
OFFENDERS WHO LACK THE CAPACITY TO PROCEED TO TRIAL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1003(a) reads as rewritten:

"(a) ~~When~~ Except as provided in G.S. 15A-1003.1, when a defendant is found to be incapable of proceeding, the presiding judge, upon such additional hearing, if any, as he determines to be necessary, shall determine whether there are reasonable grounds to believe the defendant meets the criteria for involuntary commitment under Part 7 of Article 5 of Chapter 122C of the General Statutes. If the presiding judge finds reasonable grounds to believe that the defendant meets the criteria, he shall make findings of fact and issue a custody order in the same manner, upon the same grounds and with the same effect as an order issued by a clerk or magistrate pursuant to G.S. 122C-261. Proceedings thereafter are in accordance with Part 7 of Article 5 of Chapter 122C of the General Statutes. If the defendant was charged with a violent crime, including a crime involving assault with a deadly weapon, the judge's custody order shall require a law-enforcement officer to take the defendant directly to a 24-hour facility as described in G.S. 122C-252; and the order must indicate that the defendant was charged with a violent crime and that he was found incapable of proceeding."

SECTION 2. Article 56 of Chapter 15A of the General Statutes is amended by adding the following sections to read:

"§ 15A-1003.1. Referral of incapable defendant charged with sex offense against a child less than 16 years of age for commitment evaluation, review, and proceedings; disposition of defendant.

(a) When a defendant charged with a sex offense as defined in G.S. 122F-2 is found to be incapable of proceeding, the presiding judge, upon such additional hearing, if any, as the judge determines to be necessary, shall determine whether there are reasonable grounds to believe the defendant meets the criteria for involuntary commitment under Part 7 of Article 5 of Chapter 122C of the General Statutes or the criteria for commitment under Chapter 122F of the General Statutes. If the presiding judge finds reasonable grounds to believe that the defendant meets the criteria, the judge shall make findings of fact and issue a custody order in the same manner and with the same effect as an order issued by a clerk or magistrate pursuant to G.S. 122C-261. The judge's custody order shall require a law enforcement officer to take the defendant directly to a 24-hour facility as described in G.S. 122C-252; and the order must indicate that the defendant was charged with a sex offense as defined in G.S. 122F-2 and that the defendant was found incapable of proceeding.

(b) Proceedings thereafter are in accordance with Part 7 of Article 5 of Chapter 122C of the General Statutes except as follows:



1 (1) If the physician conducting the examination finds that the defendant meets
2 the criteria for involuntary commitment, the defendant shall be involuntarily
3 committed pursuant to the provisions of Part 7 of Article 5 of Chapter 122C
4 of the General Statutes.

5 (2) If the physician conducting the examination finds that the defendant does not
6 meet the criteria for involuntary commitment, the physician shall find
7 whether the defendant has a mental abnormality as defined in G.S. 122F-2.
8 If the physician determines that the defendant does have a mental
9 abnormality, the physician shall include that determination in the findings
10 and shall provide those findings to both the clerk of court and to the
11 appropriate court as provided by Chapter 122C of the General Statutes. The
12 court shall refer the case of any defendant who does not meet the criteria for
13 involuntary commitment but who does have a mental abnormality as defined
14 in G.S. 122F-2 for review by the Prosecutor's Review Committee and the
15 Attorney General and possible commitment of the defendant under Chapter
16 122F of the General Statutes. The court shall further order that the defendant
17 be held in the custody of the Department of Health and Human Services for
18 secure confinement and treatment until the review by the Prosecutor's
19 Review Committee and the Attorney General, and any subsequent hearing or
20 trial is completed. If the court receives notice that the Attorney General has
21 declined to file a petition for the commitment of the defendant after
22 conducting a review pursuant to Chapter 122F of the General Statutes, then
23 the court shall order the defendant be released or otherwise committed as
24 appropriate.

25 (c) The court may make appropriate orders for the temporary detention of the defendant
26 pending that proceeding.

27 (d) Evidence used at the hearing with regard to capacity to proceed is admissible in the
28 involuntary civil commitment proceedings."

29 **SECTION 3.** G.S. 15A-1004 reads as rewritten:

30 **"§ 15A-1004. Orders for safeguarding of defendant and return for trial.**

31 (a) When a defendant is found to be incapable of proceeding, the trial court must make
32 appropriate orders to safeguard the defendant and to ensure his return for trial in the event that
33 he subsequently becomes capable of proceeding.

34 (b) If the defendant is not placed in the custody of a hospital or other institution in a
35 proceeding for involuntary civil ~~commitment~~, commitment or civil commitment under Chapter
36 122F of the General Statutes, appropriate orders may include any of the procedures, orders, and
37 conditions provided in Article 26 of this Chapter, Bail, specifically including the power to
38 place the defendant in the custody of a designated person or organization agreeing to supervise
39 him.

40 (c) If the defendant is placed in the custody of a hospital or other institution in a
41 proceeding for involuntary civil ~~commitment~~, commitment or commitment under Chapter 122F
42 of the General Statutes, the orders must provide for reporting to the clerk if the defendant is to
43 be released from the custody of the hospital or institution. The original or supplemental orders
44 may make provisions as in subsection (b) in the event that the defendant is released. If the
45 defendant was charged with a sex offense against a child less than 16 years of age as defined in
46 G.S. 122F-2 or a violent crime, including a crime involving assault with a deadly weapon, and
47 that charge has not been dismissed, the order must require that if the defendant is to be released
48 from the custody of the hospital or other institution, he is to be released only to the custody of a
49 specified law enforcement agency. If the original or supplemental orders do not specify to
50 whom the respondent shall be released, the hospital or other institution may release the
51 defendant to whomever it thinks appropriate.

1 (d) If the defendant is placed in the custody of a hospital or institution pursuant to
2 proceedings for involuntary civil commitment, or if the defendant is placed in the custody of
3 another person pursuant to subsection (b), the orders of the trial court must require that the
4 hospital, institution, or individual report the condition of the defendant to the clerk at the same
5 times that reports on the condition of the defendant-respondent are required under Part 7 of
6 Article 5 of Chapter 122C of the General Statutes, or more frequently if the court requires, and
7 immediately if the defendant gains capacity to proceed. The order must also require the report
8 to state the likelihood of the defendant's gaining capacity to proceed, to the extent that the
9 hospital, institution, or individual is capable of making such a judgment.

10 (e) The orders must require and provide for the return of the defendant to stand trial in
11 the event that he gains capacity to proceed, unless the charges have been dismissed pursuant to
12 G.S. 15A-1008, and may also provide for the confinement or pretrial release of the defendant in
13 that event.

14 (f) The orders of the court may be amended or supplemented from time to time as
15 changed conditions require."

16 **SECTION 4.** Article 56 of Chapter 15A of the General Statutes is amended by
17 adding a new section to read:

18 **"§ 15A-1010. Referral of defendant who is incapable of proceeding to trial and charged**
19 **with sex offense against a child less than 16 years of age for civil commitment**
20 **review prior to dismissal of case.**

21 Notwithstanding G.S. 15A-1008 or G.S. 15A-1009, prior to dismissing the charges against
22 a defendant who is both charged with a sex offense as defined in G.S. 122F-2 and found
23 incapable of proceeding to trial, the court shall determine whether the defendant's case was
24 referred for review under Chapter 122F of the General Statutes, and if not, whether such
25 referral is appropriate. If the court determines that referral is appropriate, then the court shall
26 not dismiss the case at that time but shall refer the case for review to the Prosecutor's Review
27 Committee and the Attorney General pursuant to Chapter 122F of the General Statutes."

28 **SECTION 5.** G.S. 122C-261(e) reads as rewritten:

29 "(e) Upon receipt of the custody order of the clerk or magistrate or a custody order
30 issued by the court pursuant to ~~G.S. 15A-1003~~, G.S. 15A-1003 or G.S. 15A-1003.1, a law
31 enforcement officer or other person designated in the order shall take the respondent into
32 custody within 24 hours after the order is signed, and proceed according to G.S. 122C-263. The
33 custody order is valid throughout the State."

34 **SECTION 6.** G.S. 122C-263(b) reads as rewritten:

35 "(b) The examination set forth in subsection (a) of this section is not required if:

- 36 (1) The affiant who obtained the custody order is a physician or eligible
37 psychologist who recommends inpatient commitment;
- 38 (2) The custody order states that the respondent was charged with a sex offense
39 against a child less than 16 years of age as defined in G.S. 122F-2 or a
40 violent crime, including a crime involving assault with a deadly weapon, and
41 he was found incapable of proceeding; or
- 42 (3) Repealed by Session Laws 1987, c. 596, s. 3.

43 In any of these cases, the law-enforcement officer shall take the respondent directly to a
44 24-hour facility described in G.S. 122C-252."

45 **SECTION 7.** G.S. 122C-266(b) reads as rewritten:

46 "(b) If the custody order states that the respondent was charged with a sex offense
47 against a child less than 16 years of age as defined in G.S. 122F-2 or a violent crime, including
48 a crime involving assault with a deadly weapon, and that he was found incapable of
49 proceeding, the physician shall examine him as set forth in subsection (a) of this section.
50 However, the physician may not release him from the facility until ordered to do so following
51 the district court hearing."

1 **SECTION 8.** G.S. 122C-268(c) reads as rewritten:

2 "(c) If the respondent's custody order indicates that he was charged with a sex offense
3 against a child less than 16 years of age as defined in G.S. 122F-2 or a violent crime, including
4 a crime involving an assault with a deadly weapon, and that he was found incapable of
5 proceeding, the clerk shall give notice of the time and place of the hearing as provided in
6 G.S. 122C-264(d). The district attorney in the county in which the respondent was found
7 incapable of proceeding may represent the State's interest at the hearing."

8 **SECTION 9.** The General Statutes are amended by adding a new Chapter to read:

9 "Chapter 122F.

10 "Civil Commitment of Certain Sex Offenders.

11 "§ 122F-1. Legislative findings.

12 The General Assembly finds that a group of individuals who commit sexual offenses
13 against children but who are found incapable of proceeding to trial exists who require
14 involuntary civil commitment in a secure facility for long-term control, care, and treatment.
15 The General Assembly further finds that without very close supervision there is a high
16 likelihood that these offenders will repeat their sexual offenses against children. Although these
17 offenders may be incapable of proceeding to trial, they may not be diagnosed as mentally ill
18 and therefore cannot be involuntarily committed under involuntary commitment proceedings
19 that pertain to persons who are mentally ill and a danger to self or others. Because the existing
20 civil commitment process is inadequate to address the special needs of these sexual offenders,
21 the risks that they present to society, and the likelihood of repeat offenses against children, the
22 General Assembly has determined that a separate, involuntary civil commitment process for the
23 long-term control, care, and treatment of these sexual offenders is necessary.

24 "§ 122F-2. Definitions.

25 The following definitions apply in this Chapter:

- 26 (1) Court. – The appropriate superior court in the Superior Court Division of the
27 General Court of Justice.
- 28 (2) Mental abnormality. – A mental condition affecting a person's emotional or
29 volitional capacity that predisposes the person to commit sex offenses in a
30 degree constituting such person a menace to the health and safety of others.
31 The term includes a personality disorder that makes the person likely to
32 engage in repeat sex offenses if not confined in a secure facility for
33 long-term control, care, and treatment.
- 34 (3) Sex offense. – The term includes any of the offenses set out in this
35 subdivision if the offense is committed against a child less than 16 years of
36 age. The term also includes a solicitation or conspiracy to commit any of
37 these offenses against a child less than 16 years of age and aiding and
38 abetting any of these offenses if committed against a child less than 16 years
39 of age.
- 40 a. G.S. 14-27.2 (first-degree rape).
- 41 b. G.S. 14-27.2A (rape of a child; adult offender).
- 42 c. G.S. 14-27.3 (second degree rape).
- 43 d. G.S. 14-27.4 (first-degree sexual offense).
- 44 e. G.S. 14-27.4A (sexual offense with a child; adult offender).
- 45 f. G.S. 14-27.5 (second-degree sexual offense).
- 46 g. G.S. 14-27.5A (sexual battery).
- 47 h. G.S. 14-27.7 (intercourse and sexual offense with certain victims).
- 48 i. G.S. 14-27.7A(a) (statutory rape or sexual offense of person who is
49 13-, 14-, or 15-years-old where the defendant is at least six years
50 older).

- 1 j. G.S. 14-43.13 (subjecting or maintaining a person for sexual
2 servitude).
- 3 k. G.S. 14-178 (incest between near relatives).
- 4 l. G.S. 14-190.6 (employing or permitting minor to assist in offenses
5 against public morality and decency).
- 6 m. G.S. 14-190.9(a1) (felonious indecent exposure).
- 7 n. G.S. 14-190.16 (first-degree sexual exploitation of a minor).
- 8 o. G.S. 14-190.17 (second-degree sexual exploitation of a minor).
- 9 p. G.S. 14-190.17A (third-degree sexual exploitation of a minor).
- 10 q. G.S. 14-190.18 (promoting prostitution of a minor).
- 11 r. G.S. 14-190.19 (participating in the prostitution of a minor).
- 12 s. G.S. 14-202.1 (taking indecent liberties with children).
- 13 t. G.S. 14-202.3 (Solicitation of child by computer to commit an
14 unlawful sex act).

- 15 (4) Sexual predator. – A person who: (i) is charged with committing a sex
16 offense; (ii) is found incapable of proceeding to trial; and (iii) suffers from a
17 mental abnormality.

18 **"§ 122F-3. Scope of Chapter; referral of defendant for review and possible civil**
19 **commitment as sexual predator.**

20 Civil commitment pursuant to this Chapter is available only for a defendant who is charged
21 with a sex offense, found incapable of proceeding to trial, and determined to have a mental
22 abnormality. A defendant who is charged with a sex offense and determined to be incapable of
23 proceeding to trial may be referred for review and determination of whether the defendant is a
24 sexual predator under this Chapter by either a court pursuant to G.S. 15A-1003.1 or by a
25 facility, institution, or agency that has custody of the defendant pursuant to G.S. 122F-4.

26 **"§ 122F-4. Release of certain defendants from confinement in secure facility.**

27 (a) No Release of Certain Defendants From Secure Facility Without Notice. – No
28 facility, institution, or agency that has legal custody of a defendant who: (i) is charged with a
29 sex offense but found incapable of proceeding to trial and (ii) is lawfully confined in a secure
30 facility shall release the defendant without providing notice of the pending release to the
31 Attorney General, the Prosecutor's Review Committee, and the victim or the victim's parent or
32 legal guardian as appropriate at least 90 days before the release.

33 (b) Information to Be Provided to the Victim or the Victim's Parent or Legal Guardian
34 as Appropriate, Attorney General, and Prosecutor Review Committee. – The facility,
35 institution, or agency with legal custody of the defendant shall provide to the victim or the
36 victim's parent or legal guardian as appropriate, the Attorney General, and the Prosecutor's
37 Review Committee all of the following:

- 38 (1) The defendant's name, identifying factors, anticipated future residence, and
39 offense history.
- 40 (2) The documentation of institutional adjustment and any treatment received by
41 the sexual predator.

42 (c) Immunity. – The facility, institution, or agency with custody of the defendant, its
43 employees, officials, individuals contracting, appointed, or volunteering to perform services
44 under this Chapter, and the Prosecutor's Review Committee established in G.S. 122F-5 are
45 immune from civil or criminal liability for any good-faith conduct under this Chapter.

46 **"§ 122F-5. Prosecutor's Review Committee; scope of review; membership requirements.**

47 (a) Committee Appointed; Membership. – The Attorney General shall appoint a
48 Prosecutor's Review Committee. The Committee shall include a member of the staff of the
49 Attorney General, a district attorney, and a victim's representative. The Attorney General or the
50 Attorney General's designee shall be the chair of the Committee.

1 (b) Duties and Scope of Review. – The Prosecutor's Review Committee shall review the
2 report and records of each person referred to the Committee by the court and of each person for
3 whom the Committee receives notice of a pending release under G.S. 122F-4 to determine
4 whether or not probable cause exists to believe the person is a sexual predator. The Prosecutor's
5 Review Committee shall make the probable cause determination within 30 days of receiving
6 the report and records from the court or facility, institution, or agency as appropriate. In
7 addition to the records and reports considered by the court referring the defendant's case
8 pursuant to G.S. 15A-1003.1, or the facility, institution, or agency notifying the Committee of a
9 pending release of a defendant, the Committee shall also consider information provided by the
10 district attorney who prosecuted the defendant.

11 **"§ 122F-6. Petition for probable cause determination.**

12 When the Prosecutor's Review Committee has determined that probable cause exists to
13 support the allegation that the defendant is a sexual predator, the Attorney General shall file a
14 petition with the court in the jurisdiction where the person committed the offense and shall
15 notify the victim or the victim's parent or legal guardian as appropriate and the district attorney
16 in the jurisdiction where the defendant was charged with the offense that the Committee found
17 that probable cause exists. The Attorney General shall also notify the victim or the victim's
18 parent or legal guardian as appropriate of the time, date, and location of the probable cause
19 hearing before the court. The petition, which must be filed within 30 days of the probable cause
20 determination by the Prosecutor's Review Committee, shall request that the court make a
21 probable cause determination as to whether the person is a sexual predator. The petition shall
22 allege that the defendant is a sexual predator and shall state sufficient facts that would support a
23 probable cause allegation.

24 **"§ 122F-7. Determination of probable cause; taking person into custody; hearing;**
25 **evaluation.**

26 (a) Determination of Probable Cause. – Upon filing of a petition under G.S. 122F-6, the
27 court shall determine whether probable cause exists to believe that the person named in the
28 petition is a sexual predator. If the court determines that probable cause exists to believe that
29 the person is a sexual predator, the person shall be taken into custody if he or she is not already
30 confined in a secure facility.

31 (b) Notice and Hearing to Contest Probable Cause. – Immediately upon being taken
32 into custody pursuant to subsection (a) of this section, the person shall be provided with notice
33 of the opportunity to appear in person at a hearing to contest probable cause as to whether the
34 detained person is a sexual predator. This hearing shall be held within 72 hours after a person is
35 taken into custody pursuant to subsection (a) of this section. At this hearing the court shall do
36 all of the following:

- 37 (1) Verify the detainee's identity.
- 38 (2) Receive evidence and hear arguments from the person and the district
39 attorney or Attorney General as appropriate.
- 40 (3) Determine whether probable cause exists to believe that the person is a
41 sexual predator.

42 The State may rely upon the petition and supplement the petition with additional
43 documentary evidence or live testimony.

44 (c) Defendant's Rights at Hearing to Contest Probable Cause. – At the hearing to
45 contest probable cause as provided in subsection (b) of this section, the detained person has all
46 of the following rights in addition to any rights previously specified:

- 47 (1) To be represented by counsel.
- 48 (2) To present evidence on the person's behalf.
- 49 (3) To cross-examine witnesses who testify against the person.
- 50 (4) To view and copy all petitions and reports in the court file.

1 (d) Evaluation of Defendant if Probable Cause Found. – If the probable cause
2 determination is made, the court shall direct that the person be transferred to an appropriate
3 secure facility including, but not limited to, a local or regional detention facility for an
4 evaluation as to whether the person is a sexual predator. The evaluation shall be conducted by a
5 qualified expert approved by the court at the probable cause hearing.

6 **"§ 122F-8. Trial; trier of fact; continuation of trial; assistance of counsel; access of**
7 **examiners to person; payment of expenses.**

8 (a) Authority of Attorney General and District Attorney to Represent the State in Trial
9 for Civil Commitment. – Both the Attorney General and the district attorney in the jurisdiction
10 where the defendant committed the sex offense may represent the State in the trial for civil
11 commitment pursuant to this section and G.S. 122F-9; however, if the venue for the civil
12 commitment trial is the jurisdiction where the defendant was charged with the sex offense, then
13 the Attorney General shall refer the case to the appropriate district attorney in that jurisdiction
14 unless ordered otherwise by the court.

15 (b) Trial Schedule; Request for Jury Trial; Continuation of Trial; Notice to Victim or
16 the Victim's Parent or Legal Guardian as Appropriate. – Within 60 days after the completion of
17 a hearing held pursuant to G.S. 122F-6 in which probable cause was found, the court shall
18 conduct a trial to determine: (i) whether the person committed the act with which the defendant
19 is charged and, if so, (ii) whether the person is a sexual predator. Within 30 days after the
20 determination of probable cause by the court pursuant to G.S. 122F-7, the person, or the district
21 attorney or Attorney General as appropriate, may request, in writing, that the trial be before a
22 jury. If such a request is made, the court shall schedule a trial before a jury at the next available
23 date in the superior court in the county where the offense was committed. If no request is made,
24 the trial shall be before a judge in the county where the offense was committed. The trial may
25 be continued upon the request of either party and a showing of good cause, or by the court on
26 its own motion in the due administration of justice, and only if the respondent will not be
27 substantially prejudiced. The Attorney General or the district attorney as appropriate shall
28 notify the victim or the victim's parent or legal guardian as appropriate, in a timely manner, of
29 the time, date, and location of the trial.

30 (c) Assistance of Counsel; Access of Examiners to Person; Payment of Expenses. – At
31 all stages of the proceedings under this Chapter, a person subject to this Chapter is entitled to
32 the assistance of counsel, and if the person is indigent, the court shall appoint counsel to assist
33 the person. If a person is subjected to an examination under this Chapter, the person may retain
34 a qualified expert of his or her own choosing to perform the examination. All examiners are
35 permitted to have reasonable access to the person for the purpose of the examination, as well as
36 access to all relevant medical, psychological, criminal offense, and disciplinary records and
37 reports. In the case of an indigent person who would like an expert of his or her own choosing,
38 the court shall determine whether the services are necessary. If the court determines that the
39 services are necessary and the expert's requested compensation for the services is reasonable,
40 the court shall assist the person in obtaining the expert to perform an examination or participate
41 in the trial on the person's behalf. The court shall approve payment for the services upon the
42 filing of a certified claim for compensation supported by a written statement specifying the
43 time expended, services rendered, expenses incurred on behalf of the person, and compensation
44 received in the case or for the same services from any other source.

45 **"§ 122F-9. Standard for determining predator status; control, care, and treatment of**
46 **defendant; interagency agreements; release; mistrial procedures.**

47 (a) Trial: Determine Whether Defendant Committed Unlawful Act. – When conducting
48 a trial under this Chapter, the court first shall hear evidence and determine whether the
49 defendant committed the act with which he or she is charged. The hearing on this issue shall
50 comply with all the procedures specified in this section. In addition, the rules of evidence
51 applicable in criminal cases apply, and all constitutional rights available to defendants at

1 criminal trials, other than the right not to be tried while lacking the capacity to proceed to trial,
2 apply. After hearing evidence on this issue, the court shall make specific findings on whether
3 the defendant committed the act with which he or she is charged; the extent to which the
4 defendant's incompetence or developmental disability affected the outcome of the hearing,
5 including its effect on the defendant's ability to consult with and assist counsel and to testify on
6 the defendant's own behalf; the extent to which the evidence could be reconstructed without the
7 assistance of the defendant; and the strength of the prosecution's case. If, after the conclusion of
8 the hearing on this issue, the court finds beyond a reasonable doubt that the defendant
9 committed the act with which he or she is charged, the court shall enter a final order and may
10 proceed to consider whether the defendant should be committed pursuant to this Chapter.

11 (b) Trial: Determine Sexual Predator Status. – The court or jury shall determine
12 whether, beyond a reasonable doubt, the defendant is a sexual predator. If a jury determines
13 that the defendant is a sexual predator, the determination shall be by unanimous verdict. If the
14 court or jury determines that the defendant is a sexual predator, the defendant shall be
15 committed to the custody of the Department of Health and Human Services for control, care,
16 and treatment until such time as the defendant's mental abnormality has so changed that the
17 defendant is safe to be at large and has been released pursuant to this Chapter.

18 (c) Control, Care, and Treatment of Defendant. – The control, care, and treatment shall
19 be provided at a facility operated by the Department of Health and Human Services. At all
20 times, a defendant committed for control, care, and treatment by the Department of Health and
21 Human Services pursuant to this Chapter shall be kept in a secure facility, and the defendant
22 shall be segregated at all times from other patients under the supervision of the Department of
23 Health and Human Services. The Department of Health and Human Services may enter into an
24 interagency agreement with the Department of Correction for the control, care, and treatment of
25 these defendants. A defendant who is in the confinement of the Department of Correction
26 pursuant to an interagency agreement authorized by this Chapter shall be kept in a secure
27 facility and shall, if practical and to the degree possible, be housed and managed separately
28 from offenders in the custody of the Department of Correction.

29 (d) Release if Jury Not Convinced Beyond a Reasonable Doubt. – If the court or jury is
30 not satisfied beyond a reasonable doubt that the defendant committed the act with which the
31 defendant was charged, the defendant shall be released. If the court or jury is not satisfied
32 beyond a reasonable doubt that the defendant is a sexual predator, the court shall direct the
33 defendant's release.

34 (e) Mistrial. – Upon a mistrial, the court shall direct that the defendant be held at an
35 appropriate secure facility including, but not limited to, a local or regional detention facility
36 until another trial is conducted. A subsequent trial following a mistrial must be held within 90
37 days of the previous trial, unless the subsequent trial is continued.

38 (f) Right of Appeal. – The court or jury's determination that a defendant committed the
39 act with which the defendant is charged may be appealed. The court or jury's determination that
40 a defendant is a sexual predator may be appealed. The defendant shall be committed to the
41 custody of the Department of Health and Human Services pending his or her appeal.

42 **"§ 122F-10. Periodic mental examination of committed defendants; report; petition for**
43 **release; hearing; trial to consider release.**

44 (a) Periodic Mental Examination. – A defendant committed pursuant to this Chapter
45 shall have an examination of his or her mental condition performed once every year. The
46 defendant may retain or, if the defendant is indigent and so requests, the court may appoint a
47 qualified expert to examine the defendant, and the expert shall have access to all medical,
48 psychological, criminal offense, and disciplinary records and reports concerning the defendant.
49 The annual report shall be provided to the court which committed the defendant pursuant to this
50 Chapter, the Attorney General, and the district attorney in the jurisdiction where the defendant
51 was charged with the sex offense.

1 (b) Judicial Hearing; Defendant's Right to Petition for Release. – The court shall
2 conduct an annual hearing to review the status of the committed defendant. The committed
3 defendant is not prohibited from petitioning the court for release at this hearing. The Secretary
4 of Health and Human Services shall provide the committed defendant with an annual written
5 notice of the defendant's right to petition the court for release over the Secretary's objection;
6 the notice shall contain a waiver of rights. The Secretary shall forward the notice and waiver
7 form to the court with the annual report. The committed defendant has a right to have an
8 attorney represent him or her at the hearing, but the committed defendant is not entitled to be
9 present at the hearing.

10 (c) Change in Mental Abnormality. – If the court determines that probable cause exists
11 to believe that the defendant's mental abnormality has so changed that the defendant is safe to
12 be at large and, if released, is not likely to commit a sex offense, the court shall schedule a trial
13 on the issue. At the trial, the committed defendant is entitled to be present and is entitled to the
14 benefit of all constitutional protections that were afforded the defendant at the initial
15 commitment proceeding. The Attorney General shall notify the victim or the victim's parent or
16 legal guardian as appropriate of all proceedings. The Attorney General shall represent the State
17 and has the right to have the committed defendant evaluated by qualified experts chosen by the
18 State. The trial shall be before a jury if requested by the defendant, or the Attorney General.
19 The committed defendant also has the right to have qualified experts evaluate the defendant on
20 the defendant's behalf, and the court shall appoint an expert if the defendant is indigent and
21 requests the appointment. The burden of proof at the trial is upon the State to prove beyond a
22 reasonable doubt that the committed defendant's mental abnormality remains such that the
23 defendant is not safe to be at large and, if released, is likely to engage in sex offenses.

24 **"§ 122F-11. Petition of release; hearing ordered by court.**

25 If the Secretary of Health and Human Services determines that the defendant's mental
26 abnormality has so changed that the defendant is safe to be at large and, if released, is not likely
27 to commit a sex offense, the Secretary shall authorize the defendant to petition the court for
28 release. The petition shall be served upon the court and the Attorney General. The Attorney
29 General shall notify the victim or the victim's parent or legal guardian as appropriate of the
30 proceeding. The court, upon receipt of the petition for release, shall order a hearing within 30
31 days. The Attorney General shall represent the State and has the right to have the petitioner
32 examined by experts chosen by the State. The hearing shall be before a jury if requested by
33 either the petitioner or the Attorney General. The burden of proof is upon the Attorney General
34 to show beyond a reasonable doubt that the petitioner's mental abnormality remains such that
35 the petitioner is not safe to be at large and, that if released, is likely to commit a sex offense.

36 **"§ 122F-12. Grounds for denial of petition for release.**

37 Nothing in this Chapter prohibits a defendant from filing a petition for release pursuant to
38 this Chapter. However, if a defendant has previously filed a petition for release without the
39 approval of the Secretary of Health and Human Services, and the court determined either upon
40 review of the petition or following a hearing that the petitioner's petition was frivolous or that
41 the petitioner's condition had not changed so that the petitioner continued to be a threat and, if
42 released, would commit a sex offense, the court shall deny the subsequent petition unless the
43 petition contains facts upon which a court could find the condition of the petitioner had so
44 changed that a hearing was warranted. Upon receipt of a first or subsequent petition from a
45 committed defendant without the Secretary's approval, the court shall, whenever possible,
46 review the petition and determine if the petition is based upon frivolous grounds and, if so,
47 shall deny the petition without a hearing.

48 **"§ 122F-13. Restricted release of confidential information and records to agencies and**
49 **Attorney General.**

50 In order to protect the public, relevant information and records that otherwise are
51 confidential or privileged shall be released to the facility, institution, or agency with legal

1 custody of a defendant and the Attorney General for the purpose of meeting the notice
2 requirements of G.S. 122F-4 and determining whether a defendant is or continues to be a
3 sexual predator.

4 **"§ 122F-14. Evidentiary records; court order to open sealed records.**

5 Psychological reports, drug and alcohol reports, treatment records, reports of the diagnostic
6 center, medical records, and victim impact statements that have been submitted to the court or
7 admitted into evidence under this Chapter shall be part of the record, but must be sealed and
8 opened only on order of the court.

9 **"§ 122F-15. Registration of defendants released from commitment.**

10 A defendant released from commitment pursuant to this Chapter shall register pursuant to
11 and comply with the requirements of Article 27A of Chapter 14 of the General Statutes.

12 **"§ 122F-16. Involuntary detention or commitment; constitutional requirements.**

13 The involuntary detention or commitment of a defendant pursuant to this Chapter shall
14 conform to constitutional requirements for care and treatment.

15 **"§ 122F-17. Return of defendant for trial upon regaining capacity.**

16 If a defendant who is committed under this Chapter gains capacity to proceed to trial, the
17 individual or institution that has custody of the defendant shall notify the clerk in the county in
18 which the criminal proceeding is pending and the defendant shall be returned for trial pursuant
19 to G.S. 15A-1006."

20 **SECTION 10.** Part 1 of Article 27A of Chapter 14 of the General Statutes is
21 amended by adding a new section to read:

22 **"§ 14-208.6D. Registration requirement for certain persons charged with sex offenses but**
23 **found incapable of proceeding to trial.**

24 Pursuant to G.S. 122F-15, a person who is charged with a sex offense as defined in
25 G.S. 122F-2, is found incapable of proceeding to trial, is committed under Chapter 122F of the
26 General Statutes, and is later released from commitment shall register in person just as a
27 defendant convicted of the same offense with which the person is charged must register."

28 **SECTION 11.** This act becomes effective September 1, 2009, and applies to any
29 defendant charged with a sex offense as defined by G.S. 122F-2, as enacted by Section 9 of this
30 act, and found incapable of proceeding to trial under Article 56 of Chapter 15A of the General
31 Statutes before, on, or after September 1, 2009, if the defendant has a mental abnormality,
32 unless the charge was dismissed under G.S. 15A-1008 before September 1, 2009.