

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

2

HOUSE BILL 298  
Committee Substitute Favorable 4/15/99

Short Title: Inpatient Commit./Cond't'l Release/AB.

(Public)

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE MONITORING AND SUPERVISION OF  
PERSONS ON CONDITIONAL RELEASE FROM STATE PSYCHIATRIC  
HOSPITALS, AND TO APPROPRIATE FUNDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 122C-277 reads as rewritten:

"§ 122C-277. Inpatient commitment; release ~~Release and conditional release; judicial review.~~

(a) Except as provided in subsections ~~(b) and (b1)~~ ~~(e) and (f)~~ of this section, the attending physician shall discharge a committed respondent unconditionally at any time ~~he~~ the attending physician determines that the respondent ~~is no longer~~ meets the criteria for inpatient commitment specified in G.S. 122C-263(d)(2). ~~in need of inpatient commitment.~~ Notice of discharge shall be furnished to the clerk of superior court of the county where the petition was initiated and of the county in which the facility is located. However, if the attending physician determines that the respondent meets the criteria for outpatient commitment as defined in G.S. 122C-263(d)(1), ~~he~~ the attending physician may request the clerk to calendar a supplemental hearing to determine whether an outpatient commitment order shall be issued.

1       (b) Except as provided in subsections ~~(b) and (b1)~~ (e) and (f) of this section, the  
2 attending physician may also release a respondent conditionally on a trial visit for periods  
3 not in excess of 30 days on specified medically appropriate conditions. Violation of the  
4 conditions is grounds for return of the respondent to the releasing facility. A law-  
5 enforcement officer, on request of the attending physician, shall take a ~~conditional releasee~~  
6 respondent on trial visit release into custody and return ~~him~~ the respondent to the facility  
7 in accordance with G.S. 122C-205. Notice of ~~discharge and of conditional trial visit release~~  
8 shall be furnished to the clerk of superior court of the county ~~of commitment~~ where the  
9 petition was initiated and of the county in which the facility is located.

10       (c) Except as provided in subsections (e) and (f) of this section, during a period of  
11 inpatient commitment, the attending physician may release a respondent conditionally for  
12 a period of time not to exceed the remainder of the period of inpatient commitment if the  
13 attending physician determines all of the following:

- 14       (1) The respondent continues to meet the criteria of G.S. 122C-263(d)(2).
- 15       (2) The respondent's current mental status and behavior is stable, and  
16 respondent is free of symptoms associated with previous episodes of  
17 dangerous conduct.
- 18       (3) Based on respondent's psychiatric history, there is a reasonable  
19 probability of future dangerous conduct if respondent is discharged to  
20 the community without continued treatment, supervision, and the  
21 assistance of others.
- 22       (4) Adequate treatment, supervision, and assistance for the respondent is  
23 available from the area authority that serves the community where  
24 respondent will reside upon release.
- 25       (5) Based on respondent's psychiatric history, there is a reasonable  
26 probability that respondent will not voluntarily seek or comply with  
27 recommended treatment upon release to the community unless adequate  
28 supervision and assistance are given pursuant to a conditional release  
29 plan developed in accordance with subsection (d) of this section.

30       (d) A respondent may be conditionally released pursuant to subsection (c) of this  
31 section only after an individualized outpatient treatment plan has been developed and an  
32 area authority has been designated to administer, and has agreed to provide, treatment in  
33 accordance with the treatment plan and with G.S. 122C-273(e). With the participation of  
34 the respondent, the treatment plan shall be jointly developed by the respondent's  
35 attending physician at the releasing facility and the area director, or the area director's  
36 designee, for the area authority that serves the community where the respondent will  
37 reside upon conditional release. With the consent of the respondent, and as part of the  
38 treatment planning process, the area authority shall consult with the respondent's next-of-  
39 kin or other family members on strategies designed to support respondent's continued  
40 mental stability and reduce the risk of future dangerous conduct. In addition to meeting  
41 the requirements of G.S. 122C-273(e), the treatment plan shall include, but need not be  
42 limited to, the following:

- 1           (1) Based upon an assessment of the respondent's psychiatric history and  
2 risk factors, requirements for treatment or services designed to reduce  
3 the respondent's risk for future dangerous conduct including, if any,  
4 requirements for medication, case management, supervision, and other  
5 services for the treatment of mental illness, developmental disabilities,  
6 or substance abuse.
- 7           (2) Based upon an assessment of the respondent's psychiatric history and  
8 risk factors, requirements, if any, for assistance in obtaining basic needs  
9 such as employment, transportation, food, clothing, shelter, or other  
10 support services, when this assistance is necessary to reduce the  
11 respondent's risk for future dangerous conduct.
- 12           (3) Conditions that the respondent must meet to be eligible for continued  
13 conditional release and without which there exists a reasonable  
14 probability of future dangerous conduct, including, as applicable, such  
15 requirements as periodic reporting to treatment professionals at  
16 designated time intervals, continuation of medication, and abstention  
17 from alcohol and other drugs.
- 18           (4) The address of the residence where the respondent is to live upon  
19 conditional release and the name of the person in charge of the  
20 residence, if any.

21 Before conditional release, the attending physician of the releasing facility shall provide  
22 to the respondent or the respondent's legally responsible person a copy and full  
23 explanation of the treatment plan and conditions for release. With the consent of the  
24 respondent, a copy and full explanation of the treatment plan and conditions for release  
25 shall be provided to the respondent's next-of-kin. Notice of conditional release shall be  
26 furnished to the clerk of superior court of the county where the petition was initiated, the  
27 county where conditional release will be supervised, and of the county in which the 24-  
28 hour facility is located. The respondent's violation of conditions for release is grounds  
29 for return of the respondent to a 24-hour facility in accordance with G.S. 122C-273(e).

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

41           ~~(b1)~~ (f) If the respondent was initially committed pursuant to G.S. 15A-1321, 15  
42 days before the respondent's ~~discharge-discharge, trial visit,~~ or conditional release the  
43 attending physician shall notify the clerk of superior court. The clerk shall calendar a

1 hearing and shall give notice as provided by G.S. 122C-264(d1). The district attorney for  
2 the original trial may represent the State's interest at the hearing. The hearing shall be  
3 conducted under the standards and procedures set forth in G.S. 122C-268.1. Provided,  
4 that in no event shall ~~discharge-discharge, trial visit,~~ or conditional release under this  
5 section be allowed for a respondent during the period from automatic commitment to  
6 hearing under G.S. 122C-268.1.

7 ~~(e)~~ (g) If a committed respondent under subsections (a), (b), ~~or (b1)-(c)~~, (e), or (f)  
8 of this section is from a single portal area, the attending physician shall plan jointly with  
9 the area authority as prescribed in the area plan before discharging or releasing the  
10 respondent.

11 (h) Maintenance and transfer of court files pertaining to the conditional release of  
12 a respondent under this section shall be as provided under G.S. 122C-264(g)."

13 Section 2. G.S. 122C-273 is amended by adding the following new subsection  
14 to read:

15 "(e) Unless prohibited by Chapter 90 of the General Statutes, if the respondent on  
16 inpatient commitment is conditionally released in accordance with G.S. 122C-277(c) and  
17 (d), the area authority designated in the treatment plan, and any of its area facilities, may  
18 administer to the respondent reasonable and appropriate medication and treatment that  
19 are consistent with accepted medical standards. Before the respondent is conditionally  
20 released, the inpatient facility releasing the respondent shall provide a copy of the  
21 respondent's treatment plan and conditions for release to the area authority designated to  
22 administer the treatment plan. As a condition of release, and in addition to any other  
23 conditions required by G.S. 122C-277(d)(3), the initial treatment plan shall require the  
24 respondent to meet face-to-face with a responsible professional no less than once every  
25 seven days to ensure that the respondent is complying with the conditions for release and  
26 is receiving treatment, supervision, and assistance necessary to prevent future dangerous  
27 conduct or the need for treatment in a 24-hour facility. All of the following apply to  
28 conditional release authorized under G.S. 122C-277(c) and (d) and this section.

29 (1) The medical director for the area authority shall require periodic reports  
30 concerning the condition of respondents on conditional release from any  
31 person assigned by the area authority to supervise a conditional release  
32 treatment plan. The medical director, or the medical director's designee,  
33 shall review the condition of a respondent on conditional release at least  
34 once every 30 days. In conducting the review, the medical director or  
35 the medical director's designee shall consider all reports and information  
36 received and may require the respondent to report for further evaluation.

37 (2) The area authority medical director, or the medical director's designee,  
38 may modify the treatment plan, including conditions for release, when  
39 modification is consistent with the requirements of G.S. 122C-277(d).  
40 The respondent shall be involved in and informed of any changes to the  
41 treatment plan and conditions of release. A copy of the modified  
42 treatment plan shall be placed in the respondent's medical record and  
43 copies shall be provided to the respondent and any other persons who

1           received copies of the initial treatment plan in accordance with G.S.  
2           122C-277(d).

3           (3) Notwithstanding the respondent's compliance with the conditions for  
4           release, at any time that the area authority finds that conditional release  
5           is no longer appropriate and the respondent is in need of inpatient  
6           treatment, the area authority responsible for managing and supervising  
7           the respondent's treatment shall request the court of the county where  
8           the conditional release is being supervised to order the respondent taken  
9           into custody for the purpose of transportation to a 24-hour facility  
10           designated by the area authority. Upon receipt of this request, the clerk  
11           or magistrate shall issue an order to a law enforcement officer to take  
12           the respondent into custody and to take the respondent immediately to  
13           the designated 24-hour facility. Transportation to the 24-hour facility  
14           shall be provided as specified in G.S. 122C-251. Within 24 hours of  
15           arrival at the 24-hour facility, the respondent shall be examined by a  
16           physician who shall act in accordance with the procedures specified in  
17           G.S. 122C-266. If the respondent meets the criteria of G.S. 122C-  
18           266(a)(1), the 24-hour facility shall notify the clerk of court for the  
19           county in which the 24-hour facility is located and request a  
20           supplemental hearing as specified in G.S. 122C-274.1.

21           (4) If the respondent violates a condition of release, and unless compliance  
22           is obtained within 24 hours of the violation, the area authority  
23           responsible for management and supervision of the respondent's  
24           treatment shall immediately request the court of the county where the  
25           conditional release is being supervised to order the respondent taken  
26           into custody for the purpose of examination. Upon receipt of this  
27           request, the clerk or magistrate shall issue an order to a law enforcement  
28           officer to take the respondent into custody and to take the respondent  
29           immediately to the designated area authority for examination. The law  
30           enforcement officer shall turn the respondent over to the custody of the  
31           area authority for examination by a physician or eligible psychologist.  
32           Upon examination, if efforts to solicit compliance with conditions for  
33           release are successful and the respondent is not in need of treatment in a  
34           24-hour facility, the respondent shall be released and returned home  
35           after the examination. If efforts to solicit compliance with conditions  
36           for release fail or the physician or eligible psychologist determines that  
37           conditional release is no longer appropriate and the respondent needs  
38           inpatient treatment, the law enforcement officer shall transport the  
39           respondent to a 24-hour facility designated by the area authority.  
40           Transportation to the 24-hour facility shall be provided as specified in  
41           G.S. 122C-251. Within 24 hours of arrival at the 24-hour facility, the  
42           respondent shall be examined by a physician who shall act in  
43           accordance with the procedures specified in G.S. 122C-266. If the

1           respondent meets the criteria of G.S. 122C-266(a)(1), the 24-hour  
2           facility shall notify the clerk of court for the county in which the 24-  
3           hour facility is located and request a supplemental hearing as specified  
4           in G.S. 122C-274.1.

5           (5)   When an area authority physician seeks the return of the respondent to  
6           an inpatient facility, the physician shall document and report grounds  
7           for the return to the inpatient facility and the clerk of superior court of  
8           the county where the conditional release is being supervised.

9           (6)   Except as otherwise provided in this subdivision, during any period of  
10          conditional release, if the area facility determines that the respondent no  
11          longer meets the criteria set out in G.S. 122C-263(d)(2), the area facility  
12          shall notify the court and the case shall be terminated. If the respondent  
13          was initially committed as a result of conduct resulting in the respondent  
14          being charged with a violent crime, including a crime involving an  
15          assault with a deadly weapon, and the respondent was found incapable  
16          of proceeding, the designated area facility shall so notify the clerk of  
17          superior court of the county in which the area facility is located and the  
18          clerk shall schedule a rehearing and provide notice in accordance with  
19          G.S. 122C-276. If the respondent was initially committed pursuant to  
20          G.S. 15A-1321, the area facility shall so notify the clerk of superior  
21          court of the county in which the area facility is located and the clerk  
22          shall schedule a rehearing and provide notice in accordance with G.S.  
23          122C-276.1.

24          (7)   Fifteen days before the end of the initial or subsequent periods of  
25          commitment for a respondent on conditional release, the attending area  
26          facility physician shall review and evaluate the condition of the  
27          respondent. If the physician determines that the respondent continues to  
28          meet the criteria of G.S. 122C-263(d)(2), the physician shall so notify  
29          the clerk of superior court of the county in which the area facility is  
30          located and the clerk shall schedule a rehearing and provide notice in  
31          accordance with G.S. 122C-276. If the court orders inpatient  
32          recommitment and the attending area facility physician determines that  
33          the criteria for conditional release set out in G.S. 122C-277(c) continue  
34          to exist, the attending physician shall continue the respondent on  
35          conditional release for a period not to exceed the period of inpatient  
36          commitment. Continuation of conditional release during a second or  
37          subsequent inpatient recommitment order shall not require the  
38          respondent's return to a 24-hour facility."

39           Section 3. Article 5 of Chapter 122C of the General Statutes is amended by  
40           adding the following new section to read:

41           "**§ 122C-274.1. Supplemental hearings; conditional release.**

42           (a)   Upon receipt of a request for a supplemental hearing requested pursuant to  
43           G.S. 122C-273(e), the clerk shall calendar a hearing to be held within 10 days and shall

1 notify, at least 72 hours before the hearing, the petitioner, the respondent, the  
2 respondent's attorney, and the area authority responsible for managing and supervising  
3 the respondent's conditional release. Notice shall be provided in accordance with G.S.  
4 122C-264(c). The procedures for the hearing shall be in accordance with G.S. 122C-268.

5 (b) At the supplemental hearing, the court may make one of the following  
6 dispositions:

7 (1) If the court finds by clear, cogent, and convincing evidence that the  
8 respondent has violated conditions for release, it shall order the  
9 conditional release revoked.

10 (2) If the court finds by clear, cogent, and convincing evidence that the  
11 criteria for conditional release specified in G.S. 122C-277(c) are no  
12 longer met and that respondent continues to meet the criteria for  
13 inpatient commitment, the court shall order the conditional release  
14 revoked.

15 (3) If the court finds by clear, cogent, and convincing evidence that the  
16 respondent continues to meet the conditional release criteria specified in  
17 G.S. 122C-277(c) and that the respondent has not violated any condition  
18 for release, the court shall order the respondent released under a  
19 conditional release program recommended by the 24-hour facility and  
20 the designated area authority in accordance with G.S. 122C-277(d)."

21 Section 4. G.S. 122C-269(a) reads as rewritten:

22 "(a) In all cases where the respondent is held at a 24-hour facility pending hearing  
23 as provided in G.S. 122C-268, ~~G.S.—122C-268.1~~, 122C-274.1, 122C-276.1, or 122C-  
24 277(b1), unless the respondent through counsel objects to the venue, the hearing shall be  
25 held in the county in which the facility is located. Upon objection to venue, the hearing  
26 shall be held in the county where the petition was initiated, except as otherwise provided  
27 in subsection (c) of this section."

28 Section 5. G.S. 122C-264(f) reads as rewritten:

29 "(f) Except as otherwise provided in this subsection, the ~~The~~ clerk of superior court  
30 of the county where inpatient commitment hearings and rehearings are held shall provide  
31 all notices, send all records and maintain a record of all proceedings as required by this  
32 Part; ~~provided that if Part.~~ If the respondent has been committed to a 24-hour facility in a  
33 county other than ~~his county of residence~~ the county where the petition was initiated and  
34 the district court hearing is held in the county of the facility, the clerk of superior court in  
35 the county of the facility shall forward the record of the proceedings to the clerk of  
36 superior court in the county ~~of respondent's residence~~, where the petition was initiated,  
37 where they shall be maintained by receiving clerk. If a respondent on conditional release  
38 has been returned to a 24-hour facility for a hearing under G.S. 274.1, and the records of  
39 the proceedings pertaining to the respondent's inpatient commitment hearings, rehearings,  
40 and supplemental hearings are maintained by the clerk of superior court of the county  
41 where the petition was initiated, then the clerk of superior court shall forward the record  
42 of the proceedings to the clerk of superior court in the county of the facility to which the  
43 respondent was returned, where they shall be maintained by the receiving clerk."

1           Section 6. G.S. 122C-264 is amended by adding the following new subsection  
2 to read:

3           "(g) If a respondent is conditionally released under G.S. 122C-273(e) and the  
4 conditional release will be supervised in a county other than the county where the petition  
5 was initiated, the court shall order venue for further court proceedings to be transferred to  
6 the county where the conditional release will be supervised. Upon an order changing  
7 venue, the clerk of superior court in the county where the petition was initiated shall  
8 transfer the file to the clerk of superior court of the county where the conditional release  
9 will be supervised."

10           Section 7. G.S. 122C-276(c) reads as rewritten:

11           "(c) Subject to the provisions of G.S. 122C-269(c) and G.S. 122C-273(e), rehearings  
12 shall be held at the facility in which the respondent is receiving treatment. The judge is a  
13 judge of the district court of the district court district as defined in G.S. 7A-133 in which  
14 the facility is located or a district court judge temporarily assigned to that district."

15           Section 8. There is appropriated from the General Fund to the Department of  
16 Health and Human Services, Division of Mental Health the sum of seven hundred fifty-  
17 three thousand three hundred seventy dollars (\$753,370) for the 1999-2000 fiscal year  
18 and the sum of three million one hundred sixty-four thousand four dollars (\$3,164,004)  
19 for the 2000-2001 fiscal year to implement this act.

20           Section 9. This act becomes effective January 1, 2000.