

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 1253
Senate Judiciary I (Civil) Committee Substitute Adopted 7/16/08

Short Title: Sex Offender/Incapacity to Proceed.

(Public)

Sponsors:

Referred to:

April 2, 2007

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

1 criteria for commitment under Chapter 122F of the General Statutes. If the presiding
2 judge finds reasonable grounds to believe that the defendant meets the criteria, the judge
3 shall make findings of fact and issue a custody order in the same manner and with the
4 same effect as an order issued by a clerk or magistrate pursuant to G.S. 122C-261. The
5 judge's custody order shall require a law enforcement officer to take the defendant
6 directly to a 24-hour facility as described in G.S. 122C-252; and the order must indicate
7 that the defendant was charged with a sex offense as defined in G.S. 122F-2 and that the
8 defendant was found incapable of proceeding.

9 (b) Proceedings thereafter are in accordance with Part 7 of Article 5 of Chapter
10 122C of the General Statutes except as follows:

11 (1) If the physician conducting the examination finds that the defendant
12 meets the criteria for involuntary commitment, the defendant shall be
13 involuntarily committed pursuant to the provisions of Part 7 of Article
14 5 of Chapter 122C of the General Statutes.

15 (2) If the physician conducting the examination finds that the defendant
16 does not meet the criteria for involuntary commitment, the physician
17 shall find whether the defendant has a mental abnormality as defined
18 in G.S. 122F-2. If the physician determines that the defendant does
19 have a mental abnormality, the physician shall include that
20 determination in the findings and shall provide those findings to both
21 the clerk of court and to the appropriate court as provided by Chapter
22 122C of the General Statutes. The court shall refer the case of any
23 defendant who does not meet the criteria for involuntary commitment
24 but who does have a mental abnormality as defined in G.S. 122F-2 for
25 review by the Prosecutor's Review Committee and the Attorney
26 General and possible commitment of the defendant under Chapter
27 122F of the General Statutes. The court shall further order that the
28 defendant be held in the custody of the Department of Health and
29 Human Services for secure confinement and treatment until the review
30 by the Prosecutor's Review Committee and the Attorney General, and
31 any subsequent hearing or trial is completed. If the court receives
32 notice that the Attorney General has declined to file a petition for the
33 commitment of the defendant after conducting a review pursuant to
34 Chapter 122F of the General Statutes then the court shall order the
35 defendant be released or otherwise committed as appropriate.

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

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

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

41 **"§ 15A-1004. Orders for safeguarding of defendant and return for trial.**

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

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

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

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

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

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

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

38 **"§ 15A-1010. Referral of defendant who is incapable of proceeding to trial and**
39 **charged with sex offense against a child less than 16 years of age for civil**
40 **commitment review prior to dismissal of case.**

41 Notwithstanding G.S. 15A-1008 or G.S. 15A-1009, prior to dismissing the charges
42 against a defendant who is both charged with a sex offense as defined in G.S. 122F-2
43 and found incapable of proceeding to trial, the court shall determine whether the
44 defendant's case was referred for review under Chapter 122F of the General Statutes,

1 and if not, whether such referral is appropriate. If the court determines that referral is
2 appropriate, then the court shall not dismiss the case at that time but shall refer the case
3 for review to the Prosecutor's Review Committee and the Attorney General pursuant to
4 Chapter 122F of the General Statutes."

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

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

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

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

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

20 In any of these cases, the law-enforcement officer shall take the respondent directly to a
21 24-hour facility described in G.S. 122C-252."

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

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

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

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

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

39 **"Chapter 122F.**

40 **"Civil Commitment of Certain Sex Offenders.**

41 **"§ 122F-1. Legislative findings.**

42 The General Assembly finds that a group of individuals who commit sexual offenses
43 against children but who are found incapable of proceeding to trial exists who require
44 involuntary civil commitment in a secure facility for long-term control, care, and

1 treatment. The General Assembly further finds that without very close supervision there
2 is a high likelihood that these offenders will repeat their sexual offenses against
3 children. Although these offenders may be incapable of proceeding to trial, they may
4 not be diagnosed as mentally ill and therefore cannot be involuntarily committed under
5 involuntary commitment proceedings that pertain to persons who are mentally ill and a
6 danger to self or others. Because the existing civil commitment process is inadequate to
7 address the special needs of these sexual offenders, the risks that they present to society,
8 and the likelihood of repeat offenses against children, the General Assembly has
9 determined that a separate, involuntary civil commitment process for the long-term
10 control, care, and treatment of these sexual offenders is necessary.

11 **"§ 122F-2. Definitions.**

12 The following definitions apply in this Chapter:

- 13 (1) Court. – The appropriate superior court in the Superior Court–Division
14 of the General Court of Justice.
- 15 (2) Mental abnormality. – A mental condition affecting a person's
16 emotional or volitional capacity that predisposes the person to commit
17 sex offenses in a degree constituting such person a menace to the
18 health and safety of others. The term includes a personality disorder
19 that makes the person likely to engage in repeat sex offenses if not
20 confined in a secure facility for long-term control, care, and treatment.
- 21 (3) Sex offense. – The term includes any of the offenses set out in this
22 subdivision if the offense is committed against a child less than 16
23 years of age. The term also includes a solicitation or conspiracy to
24 commit any of these offenses against a child less than 16 years of age
25 and aiding and abetting any of these offenses if committed against a
26 child less than 16 years of age.
- 27 a. G.S. 14-27.2 (first degree rape).
- 28 b. G.S. 14-27.3 (second degree rape).
- 29 c. G.S. 14-27.4 (first degree sexual offense).
- 30 d. G.S. 14-27.5 (second degree sexual offense).
- 31 e. G.S. 14-27.5A (sexual battery).
- 32 f. G.S. 14-27.7 (intercourse and sexual offense with certain
33 victims).
- 34 g. G.S. 14-27.7A(a) (statutory rape or sexual offense of person
35 who is 13-, 14-, or 15-years-old where the defendant is at least
36 six years older).
- 37 h. G.S. 14-43.13 (subjecting or maintaining a person for sexual
38 servitude).
- 39 i. G.S. 14-178 (incest between near relatives).
- 40 j. G.S. 14-190.6 (employing or permitting minor to assist in
41 offenses against public morality and decency).
- 42 k. G.S. 14-190.9(a1)(felonious indecent exposure).
- 43 l. G.S. 14-190.16 (first degree sexual exploitation of a minor).
- 44 m. G.S. 14-190.17 (second degree sexual exploitation of a minor).

- 1 n. G.S. 14-190.17A (third degree sexual exploitation of a minor).
2 o. G.S. 14-190.18 (promoting prostitution of a minor).
3 p. G.S. 14-190.19 (participating in the prostitution of a minor).
4 q. G.S. 14-202.1 (taking indecent liberties with children).
5 r. G.S. 14-202.3 (Solicitation of child by computer to commit an
6 unlawful sex act).

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

10 **"§ 122F-3. Scope of Chapter; referral of defendant for review and possible civil**
11 **commitment as sexual predator.**

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

19 **"§ 122F-4. Release of certain defendants from confinement in secure facility.**

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

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

- 32 (1) The defendant's name, identifying factors, anticipated future residence,
33 and offense history.
34 (2) The documentation of institutional adjustment and any treatment
35 received by the sexual predator.

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

41 **"§ 122F-5. Prosecutor's Review Committee; scope of review; membership**
42 **requirements.**

43 (a) Committee Appointed; Membership. – The Attorney General shall appoint a
44 Prosecutor's Review Committee. The Committee shall include a member of the staff of

1 the Attorney General, a district attorney, and a victim's representative. The Attorney
2 General or the Attorney General's designee shall be the chair of the Committee.

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

14 **"§ 122F-6. Petition for probable cause determination.**

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

28 **"§ 122F-7. Determination of probable cause; taking person into custody;**
29 **hearing; evaluation.**

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

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

41 (1) Verify the detainee's identity.

42 (2) Receive evidence and hear arguments from the person and the district
43 attorney or Attorney General as appropriate.

1 (3) Determine whether probable cause exists to believe that the person is a
2 sexual predator.

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

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

8 (1) To be represented by counsel.

9 (2) To present evidence on the person's behalf.

10 (3) To cross-examine witnesses who testify against the person.

11 (4) To view and copy all petitions and reports in the court file.

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

18 **"§ 122F-8.Trial; trier of fact; continuation of trial; assistance of counsel; access of**
19 **examiners to person; payment of expenses.**

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

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

43 (c) Assistance of Counsel; Access of Examiners to Person; Payment of Expenses.
44 – At all stages of the proceedings under this Chapter, a person subject to this Chapter is

1 entitled to the assistance of counsel, and if the person is indigent, the court shall appoint
2 counsel to assist the person. If a person is subjected to an examination under this
3 Chapter, the person may retain a qualified expert of his or her own choosing to perform
4 the examination. All examiners are permitted to have reasonable access to the person for
5 the purpose of the examination, as well as access to all relevant medical, psychological,
6 criminal offense, and disciplinary records and reports. In the case of an indigent person
7 who would like an expert of his or her own choosing, the court shall determine whether
8 the services are necessary. If the court determines that the services are necessary and the
9 expert's requested compensation for the services is reasonable, the court shall assist the
10 person in obtaining the expert to perform an examination or participate in the trial on
11 the person's behalf. The court shall approve payment for the services upon the filing of a
12 certified claim for compensation supported by a written statement specifying the time
13 expended, services rendered, expenses incurred on behalf of the person, and
14 compensation received in the case or for the same services from any other source.

15 **"§ 122F-9. Standard for determining predator status; control, care, and treatment**
16 **of defendant; interagency agreements; release; mistrial procedures.**

17 (a) Trial: Determine Whether Defendant Committed Unlawful Act. – When
18 conducting a trial under this Chapter, the court first shall hear evidence and determine
19 whether the defendant committed the act with which he or she is charged. The hearing
20 on this issue shall comply with all the procedures specified in this section. In addition,
21 the rules of evidence applicable in criminal cases apply, and all constitutional rights
22 available to defendants at criminal trials, other than the right not to be tried while
23 lacking the capacity to proceed to trial, apply. After hearing evidence on this issue, the
24 court shall make specific findings on whether the defendant committed the act with
25 which he or she is charged; the extent to which the defendant's incompetence or
26 developmental disability affected the outcome of the hearing, including its effect on the
27 defendant's ability to consult with and assist counsel and to testify on the defendant's
28 own behalf; the extent to which the evidence could be reconstructed without the
29 assistance of the defendant; and the strength of the prosecution's case. If, after the
30 conclusion of the hearing on this issue, the court finds beyond a reasonable doubt that
31 the defendant committed the act with which he or she is charged, the court shall enter a
32 final order and may proceed to consider whether the defendant should be committed
33 pursuant to this Chapter.

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

42 (c) Control, Care, and Treatment of Defendant. – The control, care, and treatment
43 shall be provided at a facility operated by the Department of Health and Human
44 Services. At all times, a defendant committed for control, care, and treatment by the

1 Department of Health and Human Services pursuant to this Chapter shall be kept in a
2 secure facility, and the defendant shall be segregated at all times from other patients
3 under the supervision of the Department of Health and Human Services. The
4 Department of Health and Human Services may enter into an interagency agreement
5 with the Department of Correction for the control, care, and treatment of these
6 defendants. A defendant who is in the confinement of the Department of Correction
7 pursuant to an interagency agreement authorized by this Chapter shall be kept in a
8 secure facility and shall, if practical and to the degree possible, be housed and managed
9 separately from offenders in the custody of the Department of Correction.

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

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

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

24 **"§ 122F-10. Periodic mental examination of committed defendants; report;
25 petition for release; hearing; trial to consider release.**

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

34 (b) Judicial Hearing; Defendant's Right to Petition for Release. – The court shall
35 conduct an annual hearing to review the status of the committed defendant. The
36 committed defendant is not prohibited from petitioning the court for release at this
37 hearing. The Secretary of Health and Human Services shall provide the committed
38 defendant with an annual written notice of the defendant's right to petition the court for
39 release over the Secretary's objection; the notice shall contain a waiver of rights. The
40 Secretary shall forward the notice and waiver form to the court with the annual report.
41 The committed defendant has a right to have an attorney represent him or her at the
42 hearing, but the committed defendant is not entitled to be present at the hearing.

43 (c) Change in Mental Abnormality. – If the court determines that probable cause
44 exists to believe that the defendant's mental abnormality has so changed that the

1 defendant is safe to be at large and, if released, is not likely to commit a sex offense, the
2 court shall schedule a trial on the issue. At the trial, the committed defendant is entitled
3 to be present and is entitled to the benefit of all constitutional protections that were
4 afforded the defendant at the initial commitment proceeding. The Attorney General
5 shall notify the victim or the victim's parent or legal guardian as appropriate of all
6 proceedings. The Attorney General shall represent the State and has the right to have the
7 committed defendant evaluated by qualified experts chosen by the State. The trial shall
8 be before a jury if requested by the defendant, or the Attorney General. The committed
9 defendant also has the right to have qualified experts evaluate the defendant on the
10 defendant's behalf, and the court shall appoint an expert if the defendant is indigent and
11 requests the appointment. The burden of proof at the trial is upon the State to prove
12 beyond a reasonable doubt that the committed defendant's mental abnormality remains
13 such that the defendant is not safe to be at large and, if released, is likely to engage in
14 sex offenses.

15 **"§ 122F-11. Petition of release; hearing ordered by court.**

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

28 **"§ 122F-12. Grounds for denial of petition for release.**

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

41 **"§ 122F-13. Restricted release of confidential information and records to agencies**
42 **and Attorney General.**

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

1 legal custody of a defendant and the Attorney General for the purpose of meeting the
2 notice requirements of G.S. 122F-4 and determining whether a defendant is or continues
3 to be a 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
6 diagnostic center, medical records, and victim impact statements that have been
7 submitted to the court or admitted into evidence under this Chapter shall be part of the
8 record, but must be sealed and 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
11 pursuant to and comply with the requirements of Article 27A of Chapter 14 of the
12 General Statutes.

13 **"§ 122F-16. Involuntary detention or commitment; constitutional requirements.**

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

16 **"§ 122F-17. Return of defendant for trial upon regaining capacity.**

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

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

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

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

30 **SECTION 11.** This act becomes effective September 1, 2008, and applies to
31 any defendant charged with a sex offense as defined by G.S. 122F-2, as enacted by
32 Section 9 of this act, and found incapable of proceeding to trial under Article 56 of
33 Chapter 15A of the General Statutes before, on, or after September 1, 2008, if the
34 defendant has a mental abnormality, unless the charge was dismissed under
35 G.S. 15A-1008 before September 1, 2008.