GENERAL ASSEMBLY OF NORTH CAROLINA
1985 SESSION

CHAPTER 589
SENATE BILL 58

AN ACT TO RECODIFY THE MENTAL HEALTH, MENTAL RETARDATION, AND SUBSTANCE ABUSE LAWS OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. Chapter 122 of the General Statutes is repealed.

Sec. 2. The General Statutes are amended by adding a new Chapter to read:

"Chapter 122C.

"Mental Health, Mental Retardation,
and Substance Abuse Act of 1985.

"Article 1.

"General Provisions.

"**§ 122C-1. Short title.–**This Chapter may be cited as the Mental Health, Mental Retardation, and Substance Abuse Act of 1985.

"**§ 122C-2. Policy.–**The policy of the State is to assist individuals with mental illness, mental retardation, and substance abuse problems in ways consistent with the dignity, rights, and responsibilities of all North Carolina citizens. Within available resources it is the obligation of State and local government to provide services to eliminate, reduce, or prevent the disabling effects of mental illness, mental retardation, and substance abuse through a service delivery system designed to meet the needs of clients in the least restrictive available setting, if the least restrictive setting is therapeutically most appropriate, and to maximize their quality of life.

State and to local governments shall develop and maintain a unified system of services centered in area programs. The public service system will strive to provide a continuum of services for clients while considering the availability of services in the private sector.

The furnishing of services to implement the policy of this section requires the cooperation and financial assistance of counties, the State, and the federal government.

"**§ 122C-3. Definitions.–**As used in this Chapter, unless another meaning is specified or the context clearly requires otherwise, the following terms have the meanings specified:

(1) 'Area authority' means the area mental health, mental retardation, and substance abuse authority.

(2) 'Area board' means the area mental health, mental retardation, and substance abuse board.

(3) 'Camp Butner reservation' means the original Camp Butner reservation as may be designated by the Secretary as having been acquired by the State and includes not only areas which are owned and occupied by the

State but also those which may have been leased or otherwise disposed of by the State.

(4) 'City' has the same meaning as in G.S. 153A-1(1). (5) 'Catchment area' means the geographic part of the State served by a specific area authority.

(6) 'Client' means an individual who is admitted to and receiving service from, or who in the past had been admitted to and received services from, a facility.

(7) 'Client advocate' means a person whose role is to monitor the protection of client rights or to act as an individual advocate on behalf of a particular client in a facility.

(8) 'Commission' means the Commission for Mental Health, Mental Retardation, and Substance Abuse Services, established under Part 4 of Article 3 of Chapter 143B of the General Statutes.

(9) 'Confidential information' means any information, whether recorded or not, relating to an individual served by a facility that was received in connection with the performance of any function of the facility. 'Confidential information' does not include statistical information from reports and records or information regarding treatment or services which is shared for training, treatment, habilitation, or monitoring purposes that does not identify clients either directly or by reference to publicly known or available information.

(10) 'County of Residence' of a client means the county of his domicile at the time of his admission or commitment to a facility. A county of residence is not changed because an individual is temporarily out of his county in a facility or otherwise.

(11) 'Dangerous to himself or others' means:

a. 'Dangerous to himself' means that within the recent past:

1. The individual has acted in such a way as to show:

I. That he would be unable, without care, supervision, and the continued assistance of others not otherwise available, to exercise self-control, judgment, and discretion in the conduct of his daily

responsibilities and social relations, or to satisfy his need for nourishment, personal or medical care, shelter, or self-protection and safety; and

II. That there is a reasonable probability of his suffering serious physical debilitation within the near future unless adequate treatment is given pursuant to this Chapter. A showing of behavior that is grossly irrational, of actions that the individual is unable to control, of behavior that is grossly inappropriate to the situation, or of other

evidence of severely impaired insight and judgment shall create a prima facie inference that the individual is unable to care for himself; or

2. The individual has attempted suicide or threatened suicide and that there is a reasonable probability of suicide unless adequate treatment is given pursuant to this Chapter; or
3. The individual has mutilated himself or attempted to mutilate himself and that there is a reasonable probability of serious self-mutilation unless adequate treatment is given pursuant to this Chapter.

Previous episodes of dangerousness to self, when applicable, may be considered when determining reasonable probability of physical debilitation, suicide, or self-mutilation.

b. 'Dangerous to others' means that within the recent past, the individual has inflicted or attempted to inflict or threatened to inflict serious bodily harm on another, or has acted in such a way as to create a substantial risk of serious bodily harm to another, or has engaged in extreme destruction of property; and that there is a reasonable probability that this conduct will be repeated. Previous episodes of dangerousness to others, when applicable, may be considered when determining reasonable probability of future dangerous conduct.

(12) 'Department' means the North Carolina Department of Human Resources.

(13) 'Division' means the Division of Mental Health, Mental Retardation and Substance Abuse Services of the Department.

(14) 'Facility' means any person at one location whose primary purpose is to provide services for the care, treatment, habilitation, or rehabilitation of the mentally ill, the mentally retarded, or substance abusers, and includes:

a. An 'area facility', which is a facility that is operated by or under contract with the area authority. A facility that is providing services under contract with the area authority is an area facility for purposes of the contracted services only. Area facilities may also be licensable facilities in accordance with Article 2 of this Chapter. A State facility is not an area facility;

b. A 'licensable facility', which is a facility that provides services for one or more minors or for two or more adults. When the services offered are provided to individuals who are mentally ill or mentally retarded, these services shall be day services offered to the same individual for a period of three hours or more during a 24-hour period, or residential services provided for 24 consecutive hours or more. When the services offered are provided to individuals who are substance abusers, these

services shall include all outpatient services, day services offered to the same individual for a period of three hours or more during a 24-hour period, or residential services provided for 24 consecutive hours or more. Facilities for individuals who are substance abusers include chemical dependency facilities;

c. A 'private facility', which is a facility that is either a licensable facility or a special unit of a general hospital or a part of either in which the specific service provided is not covered under the terms of a contract with an area authority;

d. The psychiatric service of North Carolina Memorial Hospital;

e. A 'residential facility', which is a 24-hour facility that is not a hospital, including a group home;

f. A 'State facility', which is a facility that is operated by the Secretary;

g. A '24-hour facility', which is a facility that provides a structured living environment and services for a period of 24 consecutive hours or more and includes hospitals that are facilities under this Chapter; and

h. A Veterans Administration facility or part thereof that provides services for the care, treatment, habilitation, or rehabilitation of the mentally ill, the mentally retarded, or substance abusers.

(15) 'Guardian' means a person appointed as a guardian of the person or general guardian by the court under Chapters 7A, 33, or 35 of the General Statutes.

(16) 'Habilitation' means training, care, and specialized therapies undertaken to assist a client in maintaining his current level of functioning or in achieving progress in developmental skills areas.

(17) 'Incompetent adult' means an adult individual adjudicated incompetent.

(18) 'Intoxicated' means the condition of an individual whose mental or physical functioning is presently substantially impaired as a result of the use of alcohol or other substance.

(19) 'Law enforcement officer' means sheriff, deputy sheriff, police officer, State highway patrolman, or an officer employed by a city or county under

G.S. 122C-302.

(20) 'Legally responsible person' means: (i) when applied to an adult, who has been adjudicated incompetent, a guardian, or an attorney-in-fact acting under a valid durable power of attorney that authorizes him to provide or consent to medical care and hospitalization for the principal; or (ii) when applied to a minor, a parent, guardian, a person standing in loco parentis, or a legal custodian other than a parent who has been granted specific authority in a custody order to consent for medical care, including psychiatric treatment.

(21) 'Mental illness' means: (i) when applied to an adult, an illness which so lessens the capacity of the individual to use self-control, judgment, and discretion in the conduct of his affairs and social relations as to make it necessary or advisable for him to be under treatment, care, supervision, guidance, or control; and (ii) when applied to a minor, a mental condition, other than mental retardation alone, that so lessens or impairs the youth's capacity either to develop or exercise age appropriate or age adequate self-control, judgment, or initiative in the conduct of his activities and social relationships as to make it necessary or advisable for him to be under treatment, care, supervision, guidance, or control.

(22) 'Mental retardation' means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested before age 22.

(23) 'Mentally retarded with accompanying behavior disorder' means an individual who is mentally retarded and who has a pattern of maladaptive behavior that is recognizable no later than adolescence and is characterized by gross outbursts of rage or physical aggression against other individuals or property.

(24) 'Next of kin' means the individual designated in writing by the client or his legally responsible person upon the client's acceptance at a facility; provided that if no such designation has been made, 'next of kin' means the client's spouse or nearest blood relation in accordance with G.S. 104A-1.

(25) 'Operating costs' means expenditures made by an area authority in the delivery of services for mental health, mental retardation, and substance abuse as provided in this Chapter and includes the employment of legal counsel on a temporary basis to represent the interests of the area authority.

(26) 'Operator' means the individual who is responsible for the management of a licensable facility.

(27) 'Outpatient treatment' as used in Part 7 of Article 5 means treatment in an outpatient setting and may include medication, individual or group therapy, day or partial day programming activities, services and training including educational and vocational activities, supervision of living arrangements, and any other services prescribed either to alleviate the individual's illness or disability, to maintain semi-independent functioning, or to prevent further deterioration that may reasonably be predicted to result in the need for inpatient commitment to a 24-hour facility.

(28) 'Person' means any individual, firm, partnership, corporation, company, association, joint stock association, agency, or area authority.

(29) 'Physician' means an individual licensed to practice medicine in North Carolina under Chapter 90 of the General Statutes or a licensed medical doctor employed by the Veterans Administration.

(30) 'Provider of support services' means a person that provides to a facility support services such as data processing, dosage preparation, laboratory analyses, or legal, medical, accounting, or other professional services, including human services.

(31) 'Qualified professional' means any individual with appropriate training or experience as specified by the General Statutes or by rule of the Commission in the fields of mental health or mental

retardation or substance abuse treatment or habilitation, including physicians, psychologists, psychological associates, educators, social workers, registered nurses, and certified counselors.

(32) 'Responsible professional' means an individual within a facility who is designated by the facility director to be responsible for the care, treatment, habilitation, or rehabilitation of a specific client and who is eligible to provide care, treatment, habilitation, or rehabilitation relative to the client's disability.

(33) 'Secretary' means the Secretary of the Department. (34) 'Single portal of entry and exit policy' means an admission and discharge policy for State and area facilities that may be adopted by an area authority and shall be approved by the Secretary before it is in force. The policy and its provisions shall be designed to promote quality client care in and among State and area facilities. Furthermore, the policy shall be designed to integrate otherwise independent facilities into a unified and coordinated system, in which system the area authority shall be responsible for assuring that the individual client can receive services from the facility that is best able to meet his needs. However, the policy may not be inconsistent with any other provisions of the General Statutes, nor may the policy include the complete exclusion of clients from admission to any specific State or area facility.

(35) 'Single portal area' means the county or counties that comprise the catchment area of an area authority that has adopted a single portal of entry and exit policy.

(36) 'Substance abuse' means the pathological use or abuse of alcohol or other drugs in a way or to a degree that produces an impairment in personal, social, or occupational functioning. 'Substance abuse' may include a pattern of tolerance and withdrawal.

(37) 'Substance abuser' means an individual who engages in substance abuse.

"**§ 122C-4. Use of phrase 'client or his legally responsible person'.–**Except as otherwise provided by law, whenever in this Chapter the phrase 'client or his legally

responsible person' is used, and the client is a minor or an incompetent adult, the duty or right involved shall be exercised not by the client, but by the legally responsible person.

"Article 2.

"Licensure of Facilities for the Mentally Ill, the Mentally Retarded, and Substance Abusers.

"**§ 122C-21. Purpose.–**The purpose of this Article is to provide for licensure of facilities for the mentally ill, mentally retarded, and substance abusers by the development, establishment, and enforcement of basic rules governing:

(1) The provision of services to individuals who receive services from licensable facilities as defined by this Chapter, and

(2) The construction, maintenance, and operation of these licensable facilities that in the light of existing knowledge will ensure safe and adequate treatment of these individuals.

"**§ 122C-22. Exclusions from licensure; deemed status.–**(a) The following are excluded from the provisions of this Article and are not required to obtain licensure under this Article:

(1) Physicians and psychologists duly licensed under Chapter 90 of the General Statutes and engaged in private office practice;

(2) General hospitals licensed under Article 5 of Chapter 131E of the General Statutes, that operate special units for the mentally ill, mentally retarded, or substance abusers;

(3) State and federally operated facilities; (4) Domiciliary care homes licensed under Chapter 131D of the General Statutes;

(5) Developmental child day care centers licensed under Article 7 of Chapter 110 of the General Statutes;

(6) Persons subject to licensure under rules of the Social Services Commission;

(7) Persons subject to rules and regulations of the Division of Vocational Rehabilitation Services; and (8) Facilities that provide occasional respite care for not more than two individuals at a time; provided that the primary purpose of the facility is other than as defined in G.S. 122C-3(14).

(b) If a licensable facility is certified by a nationally recognized agency, such as the Joint Commission on Accreditation of Hospitals, then the Commission may by rule deem the facility licensed under this Article. Any facility licensed under the provisions of this subsection shall continue to be subject to inspection by the Secretary.

"**§ 122C-23. Licensure.–**(a) No person shall establish, maintain, or operate a licensable facility for the mentally ill, mentally retarded or substance abusers without a current license issued by the Secretary.

(b) Each license is issued only for the premises named in the application and for the operator named in the application and shall not be transferable or assignable except with prior written approval of the Secretary.

(c) Any person who intends to establish, maintain, or operate a licensable facility shall apply to the Secretary for a license. The Secretary shall prescribe by rule the contents of the application forms.

(d) The Secretary shall issue a license if the Secretary finds that the operator complies with this Article and the rules of the Commission and Secretary.

(e) Unless a license is provisional or has been suspended or revoked, it shall be valid for a period not to exceed two years from the date of issue. The expiration date of a license shall be specified on the license when issued. Renewal of a regular license is contingent upon receipt of information required by the Secretary for renewal and continued compliance with this Article and the rules of the Commission and the Secretary.

A provisional license for a period not to exceed six months may be granted by the Secretary to a person who is temporarily unable to comply with a rule or rules. During this period the licensable facility shall correct the noncompliance based on a plan submitted to and approved by the Secretary. The noncompliance may not present an immediate threat to the health and safety of the individuals in the licensable facility. A provisional license for an additional period of time to meet the noncompliance may not be issued.

(f) Upon written application and in accordance with rules of the Commission, the Secretary may for good cause waive any of the rules implementing this Article, provided those rules do not affect the health, safety, or welfare of the individuals within the licensable facility. Decisions made pursuant to this subsection may be appealed to the Commission for a hearing in accordance with Chapter 150A of the General Statutes.

"**§ 122C-24. Adverse action on a license.–**(a) The Secretary may deny, suspend, amend, or revoke a license in any case in which the Secretary finds that there has been a substantial failure to comply with any provision of this Article or any rule adopted pursuant to it. Actions under this section and appeals of those actions shall be in accordance with rules of the Commission and Chapter 150A of the General Statutes.

(b) When an appeal is filed concerning the denial, suspension, amendment, or revocation of a license, a copy of the proposal for decision shall be sent to the Chairman of the Commission in addition to the parties specified in G.S. 150A-34. The Chairman or members of the Commission designated by the Chairman may submit for the Secretary's consideration written or oral comments concerning the proposal prior to the issuance of a final agency decision in accordance with G.S. 150A-36.

"**§ 122C-25. Inspections; confidentiality.–**(a) The Secretary shall make or cause to be made inspections that the Secretary considers necessary. Facilities licensed under this Article shall be subject to inspection at all times by the Secretary.

(b) Notwithstanding G.S. 8-53, G.S. 8-53.3 or any other law relating to confidentiality of communications involving a patient or client, in the course of an inspection conducted under this section, representatives of the Secretary may review any writing or other record concerning the admission, discharge, medication, treatment, medical condition, or history of any individual who is or has been a patient, resident, or client of a licensable facility and the personnel records of those individuals employed by the licensable facility.

A licensable facility, its employees, and any other individual interviewed in the course of an inspection are immune from liability for damages resulting from disclosure of any information to the Secretary.

Except as required by law, it is unlawful for the Secretary or an employee of the Department to disclose the following information to someone not authorized to receive the information:

(1) Any confidential or privileged information obtained under this section unless the client or his legally responsible person authorizes disclosure in writing; or

(2) The name of anyone who has furnished information concerning a licensable facility without the individual's consent.

Violation of this subsection is a misdemeanor punishable by a fine, not to exceed five hundred dollars ($500.00).

All confidential or privileged information obtained under this section and the names of persons providing this information are exempt from Chapter 132 of the General Statutes.

(c) The Secretary shall adopt rules regarding inspections, that, at a minimum, provide for:

(1) A general administrative schedule for inspections; and

(2) An unscheduled inspection without notice, if there is a complaint alleging the violation of any licensing rule adopted under this Article.

"**§ 122C-26. Powers of the Commission.–**In addition to other powers and duties, the Commission shall exercise the following powers and duties:

(1) Adopt, amend, and repeal rules consistent with the laws of this State and the laws and regulations of the federal government to implement the provisions and purposes of this Article;

(2) Issue declaratory rulings needed to implement the provisions and purposes of this Article;

(3) Adopt rules governing appeals of decisions to approve or deny licensure under this Article; and (4) Adopt rules for the waiver of rules adopted under this Article.

"**§ 122C-27. Powers of the Secretary.–**The Secretary shall:

(1) Administer and enforce the provisions, rules, and decisions pursuant to this Article;

(2) Appoint hearing officers to conduct appeals under this Article;

(3) Prescribe by rule the contents of the application for licensure and renewal;

(4) Inspect facilities and records of each facility to be licensed under this Article under the rules and decisions pursuant to this Article;

(5) Issue a license upon a finding that the applicant and facility comply with the provisions of this Article and the rules of the Commission and the Secretary;

(6) Define by rule procedures for submission of periodic reports by facilities licensed under this Article;
(7) Grant, deny, suspend, or revoke a license under this Article;
(8) In accordance with rules of the Commission, make final agency decisions for appeals from the denial, suspension, or revocation of a license in accordance with G.S. 122C-24; and
(9) In accordance with rules of the Commission, grant waiver for good cause of any rules implementing this Article that do not affect the health, safety, or welfare of individuals within a licensable facility.

"**§ 122C-28. Penalties.–**Operating a licensable facility without a license is a misdemeanor and is punishable by a fine not to exceed fifty dollars ($50.00), for the first offense and a fine, not to exceed five hundred dollars ($500.00), for each subsequent offense. Each day's operation of a licensable facility without a license is a separate offense.

"**§ 122C-29. Injunction.–**(a) Notwithstanding the existence or pursuit of any other remedy, the Secretary may, in the way provided by law, maintain an action in the name of the State for injunction or other process against any person to restrain or prevent the establishment, conduct, management, or operation of a licensable facility operating without a license or in a way that threatens the health, safety, or welfare of the individuals in the licensable facility.

(b) If any individual interferes with the proper performance or duty of the Secretary in carrying out this Article, the Secretary may institute an action in the superior court of the county in which the interference occurred for injunctive relief against the continued interference, irrespective of all other remedies at law.

"Article 3.

"Clients' Rights.

"**§ 122C-51. Declaration of policy on clients' rights.–**It is the policy of the State to assure basic human rights to each client of a facility. These rights include the right to dignity, privacy, humane care, and freedom from mental and physical abuse, neglect, and exploitation. Each facility shall assure to each client the right to live as normally as possible while receiving care and treatment.

It is further the policy of this State that each client who is admitted to and is receiving services from a facility has the right to treatment, including access to medical care and habilitation, regardless of age or degree of mental illness, mental retardation, or substance abuse. Each client has the right to an individualized written treatment or habilitation plan setting forth a program to maximize the development or restoration of his capabilities.

"**§ 122C-52. Right to confidentiality.–**(a) Confidential information acquired in attending or treating a client is not a public record under Chapter 132 of the General Statutes.

(b) Except as authorized by G.S. 122C-53 through G.S. 122C-56, no individual having access to confidential information may disclose this information.

(c) Except as provided by G.S. 122C-53 through G.S. 122C-56, each client has the right that no confidential information acquired be disclosed by the facility.

(d) No provision of G.S. 122C-53 through G.S. 122C-56 permitting disclosure of confidential information may apply to the records of a client when federal statutes or regulations applicable to that client prohibit the disclosure of this information.

(e) Except as required or permitted by law, disclosure of confidential information to someone not authorized to receive the information is a misdemeanor and is punishable by a fine, not to exceed five hundred dollars ($500.00).

"**§ 122C-53. Exceptions; client.–**(a) A facility may disclose confidential information if the client or his legally responsible person consents in writing to the release of the information to a specified person. This release is valid for a specified length of time and is subject to revocation by the consenting individual.

(b) A facility may disclose the fact of admission or discharge of a client to the client's next of kin whenever the responsible professional determines that the disclosure is in the best interest of the client.

(c) Upon request a client shall have access to confidential information in his client record except information that would be injurious to the client's physical or mental well-being as determined by the attending physician or, if there is none, by the facility director or his designee. If the attending physician or, if there is none, the facility director or his designee has refused to provide confidential information to a client, the client may request that the information be sent to a physician or psychologist of the client's choice, and in this event the information shall be so provided.

(d) Except as provided by G.S. 90-21.4(b), upon request the legally responsible person of a client shall have access to confidential information in the client's record; except information that would be injurious to the client's physical or mental well-being as determined by the attending physician or, if there is none, by the facility director or his designee. If the attending physician or, if there is none, the facility director or his designee has refused to provide confidential information to the legally responsible person, the legally responsible person may request that the information be sent to a physician or psychologist of the legally responsible person's choice, and in this event the information shall be so provided.

(e) A client advocate's access to confidential information and his responsibility for safeguarding this information are as provided by subsection (g) of this section.

(f) As used in subsection (g) of this section, the following terms have the meanings specified:

(1) 'Internal client advocate' means a client advocate who is employed by the facility or has a written contractual agreement with the Department or with the facility to provide monitoring and advocacy services to clients in the facility in which the client is receiving services; and

(2) 'External client advocate' means a client advocate acting on behalf of a particular client with the written consent and authorization;

a. In the case of a client who is an adult and who has not been adjudicated incompetent under Chapters 33 or 35 of the General Statutes, of the client; or

b. In the case of any other client, of the client and his legally responsible person.

(g) An internal client advocate shall be granted, without the consent of the client or his legally responsible person, access to routine reports and other confidential information necessary to fulfill his monitoring and advocacy functions. In this role, the internal client advocate may disclose confidential information received to the client involved, to his legally responsible person, to the director of the facility or his designee, to other individuals within the facility who are involved in the treatment or habilitation of the client, or to the Secretary in accordance with the rules of the Commission. Any further disclosure shall require the written consent of the client and his legally responsible person. An external client advocate shall have access to confidential information only upon the written consent of the client and his legally responsible person. In this role, the external client advocate may use the information only as authorized by the client and his legally responsible person.

(h) In accordance with G.S. 122C-205, the facility shall notify the appropriate individuals upon the escape from and subsequent return of clients to a 24-hour facility.

(i) Upon the request of a client, a facility shall disclose to an attorney confidential information relating to that client.

"**§ 122C-54. Exceptions; abuse reports and court proceedings.–** (a) A facility shall disclose confidential information if a court of competent jurisdiction issues an order compelling disclosure.

(b) If an individual is a defendant in a criminal case and a mental examination of the defendant has been ordered by the court, the facility may send the results or the report of the mental examination to the clerk of court, to the district attorney or prosecuting officer, and to the attorney of record for the defendant as provided in G.S. 15A-1002(d).

(c) Certified copies of written results of examinations by physicians and records in the cases of clients voluntarily admitted or involuntarily committed and facing district court hearings and rehearings pursuant to Article 5 of this Chapter shall be furnished by the facility to the client's counsel, the attorney representing the State's interest, and the court. The confidentiality of client information shall be preserved in all matters except those pertaining to the necessity for admission or continued stay in the facility or commitment under review. The relevance of confidential information for which disclosure is sought in a particular case shall be determined by the court with jurisdiction over the matter.

(d) Any individual seeking confidential information contained in the court files or the court records of a proceeding made pursuant to Article 5 of this Chapter may file a written motion in the cause setting out why the information is needed. A district court judge may issue an order to disclose the confidential information sought if he finds the order is appropriate under the circumstances and if he finds that it is in the best interest of the individual admitted or committed or of the public to have the information disclosed.

(e) Upon the request of the legally responsible person or the minor admitted or committed, and after that minor has both been released and reached adulthood, the court records of that minor made in proceedings pursuant to Article 5 of this Chapter may be expunged from the files of the court. The minor and his legally responsible person shall

be informed in writing by the court of the right provided by this subsection at the time that the application for admission is filed with the court.

(f) A State facility and the psychiatric service of North Carolina Memorial Hospital may disclose confidential information to staff attorneys of the Attorney General's office whenever the information is necessary to the performance of the statutory responsibilities of the Attorney General's office or to its performance when acting as attorney for a State facility or the psychiatric service of North Carolina Memorial Hospital.

(g) A facility may disclose confidential information to an attorney who represents either the facility or an employee of the facility, if such information is relevant to litigation, to the operations of the facility, or to the provision of services by the facility. An employee may discuss confidential information with his attorney or with an attorney representing the facility in which he is employed.

(h) A facility may disclose confidential information for purposes of complying with Article 44 of Chapter 7A of the General Statutes and Article 6 of Chapter 108A of the General Statutes, or as required by other State or federal law.

"**§ 122C-55. Exceptions; care and treatment.–**(a) Any area or State facility or the psychiatric service of North Carolina Memorial Hospital may share confidential information regarding any client of that facility with any other area or State facility or the psychiatric service of North Carolina Memorial Hospital upon a written determination by the responsible professional possessing the information that the sharing of information is necessary for the appropriate and effective care and treatment of the client and that failure to share this information would be detrimental to the care and treatment of the client. Under the circumstances described in this subsection, the consent of the client or legally responsible person is not required for this information to be furnished, and the information may be furnished despite objection by the client.

(b) A facility, physician, or other individual responsible for evaluation, management, supervision, or treatment of respondents examined or committed for outpatient treatment under the provisions of Article 5 of this Chapter may request, receive, and disclose confidential information to the extent necessary to enable them to fulfill their responsibilities.

(c) A facility may furnish confidential information in its possession to the Department of Correction when requested by that department regarding any client of that facility when the inmate has been determined by the Department of Correction to be in need of treatment for mental illness, mental retardation, or substance abuse. The Department of Correction may furnish to a facility confidential information in its possession about treatment for mental illness, mental retardation, or substance abuse that the Department of Correction has provided to any present or former inmate if the inmate is presently seeking treatment from the requesting facility or if the inmate has been involuntarily committed to the requesting facility for inpatient or outpatient treatment. Under the circumstances described in this subsection, the consent of the client or inmate shall not be required in order for this information to be furnished and the information shall be furnished despite objection by the client or inmate. Confidential information disclosed pursuant to this subsection is restricted from further disclosure.

(d) A responsible professional may disclose confidential information when in his opinion there is an imminent danger to the health or safety of the client or another individual or there is a likelihood of the commission of a felony or violent misdemeanor.

(e) A responsible professional may exchange confidential information with a physician or other health care provider who is providing emergency medical services to a client. Disclosure of the information is limited to that necessary to meet the emergency as determined by the responsible professional.

(f) A facility may disclose confidential information to a provider of support services whenever the facility has entered into a written agreement with a person to provide support services and the agreement includes a provision in which the provider of support services acknowledges that in receiving, storing, processing, or otherwise dealing with any confidential information, he will safeguard and not further disclose the information.

(g) Whenever there is reason to believe that the client is eligible for financial benefits through a governmental agency, a facility may disclose confidential information to State or federal government agencies. Disclosure is limited to that confidential information necessary to establish financial benefits for a client. After establishment of these benefits, the consent of the client or his legally responsible person is required for further release of confidential information under this subsection.

(h) Within a facility, employees, students, consultants or volunteers involved in the care, treatment, or habilitation of a client may exchange confidential information as needed for the purpose of carrying out their responsibility in serving the client.

(i) Upon specific request, a responsible professional may release confidential information to a physician or practicing psychologist who referred the client to the facility.

"**§ 122C-56. Exceptions; research and planning.–**(a) The Secretary may require information that does not identify clients from State and area facilities for purposes of preparing statistical reports of activities and services and for planning and study. The Secretary may also receive confidential information from State and area facilities when specifically required by other State or federal law.

(b) The Secretary may have access to confidential information from private or public agencies or agents for purposes of research and evaluation in the areas of mental health, mental retardation, and substance abuse. No confidential information shall be further disclosed.

(c) A facility may disclose confidential information to persons responsible for conducting general research or clinical, financial, or administrative audits if there is a justifiable documented need for this information. A person receiving the information may not directly or indirectly identify any client in any report of the research or audit or otherwise disclose client identity in any way.

"**§ 122C-57. Right to treatment and consent to treatment.–**(a) Each client who is admitted to and is receiving services from a facility has the right to receive age-appropriate treatment for mental health, mental retardation, and substance abuse illness or disability. Each client within 30 days of admission to a facility shall have an

individual written treatment or habilitation plan implemented by the facility. The client and his legally responsible person shall be informed in advance of the potential risks and alleged benefits of the treatment choices.

(b) Each client has the right to be free from unnecessary or excessive medication. Medication shall not be used for punishment, discipline, or staff convenience.

(c) Medication shall be administered in accordance with accepted medical standards and only upon the order of a physician as documented in the client's record.

(d) Each voluntarily admitted client or his legally responsible person has the right to consent to or refuse any treatment offered by the facility. Consent may be withdrawn at any time by the person who gave the consent. If treatment is refused, the qualified professional shall determine whether treatment in some other modality is possible. If all appropriate treatment modalities are refused, the voluntarily admitted client may be discharged. In an emergency, a voluntarily admitted client may be administered treatment or medication, other than those specified in subsection (f) of this section, despite the refusal of the client or his legally responsible person. The Commission may adopt rules to provide a procedure to be followed when a voluntarily admitted client refuses treatment.

(e) In the case of an involuntarily committed client, treatment measures other than those requiring express written consent as specified in subsection (f) of this section may be given despite the refusal of the client or his legally responsible person in the event of an emergency or when consideration of side effects related to the specific treatment measure is given and in the professional judgment, as documented in the client's record, of the treating physician and a second physician, who is either the director of clinical services of the facility, or his designee, either:

(1) the client, without the benefit of the specific treatment measure, is incapable of participating in any available treatment plan which will give him a realistic opportunity of improving his condition; or

(2) there is, without the benefit of the specific treatment measure, a significant possibility that the client will harm himself or others before improvement of his condition is realized.

(f) Treatment involving electroshock therapy, the use of experimental drugs or procedures, or surgery other than emergency surgery may not be given without the express and informed written consent of the client or his legally responsible person. This consent may be withdrawn at any time by the person who gave the consent. The Commission may adopt rules specifying other therapeutic and diagnostic procedures that require the express and informed written consent of the client or his legally responsible person prior to their initiation.

"**§ 122C-58. Civil rights and civil remedies.–**Except as otherwise provided in this Chapter, each adult client of a facility keeps the same right as any other citizen of North Carolina to exercise all civil rights, including the right to dispose of property, execute instruments, make purchases, enter into contractual relationships, register and vote, bring civil actions, and marry and get a divorce, unless the exercise of a civil right has been precluded by an unrevoked adjudication of incompetency. This section shall not be

construed as validating the act of any client who was in fact incompetent at the time he performed the act.

"**§ 122C-59. Use of corporal punishment.–**Corporal punishment may not be inflicted upon any client.

"**§ 122C-60. Use of physical restraints or seclusion.–**(a) Physical restraint or seclusion of a client shall be employed only when there is imminent danger of abuse or injury to himself or others, when substantial property damage is occurring, or when the restraint or seclusion is necessary as a measure of therapeutic treatment. All instances of restraint or seclusion and the detailed reasons for such action shall be documented in the client's record. Each client who is restrained or secluded shall be observed frequently, and a written notation of the observation shall be made in the client's record.

(b) The Commission may adopt rules to implement this section.

"**§ 122C-61. Treatment rights in 24-hour facilities.–**In addition to the rights set forth in G.S. 122C-57, each client who is receiving services at a 24-hour facility has the following rights:

(1) The right to receive necessary treatment for and prevention of physical ailments based upon the client's condition and projected length of stay. The facility may seek to collect appropriate reimbursement for its costs in providing the treatment and prevention; and

(2) The right to have, as soon as practical during treatment or habilitation but not later than the time of discharge, an individualized written discharge plan containing recommendations for further services designed to enable the client to live as normally as possible. A discharge plan may not be required when it is not feasible because of an unanticipated discontinuation of a client's treatment. With the consent of the client or his legally responsible person, the professionals responsible for the plans shall contact appropriate agencies at the client's destination or in his home community before formulating the recommendations. A copy of the plan shall be furnished to the client or to his legally responsible person and, with the consent of the client, to the client's next of kin.

"**§ 122C-62. Additional rights in 24-hour facilities.–**(a) In addition to the rights enumerated in G.S. 122C-51 through G.S. 122C-61, each adult client who is receiving treatment or habilitation in a 24-hour facility keeps the right to:

(1) Send and receive sealed mail and have access to writing material, postage, and staff assistance when necessary;

(2) Contact and consult with, at his own expense and at no cost to the facility, legal counsel, private physicians, and private mental health, mental retardation, or substance abuse professionals of his choice; and

(3) Contact and consult with a client advocate if there is a client advocate.

The rights specified in this subsection may not be restricted by the facility and each adult client may exercise these rights at all reasonable times.

(b) Except as provided in subsections (e) and (h) of this section, each adult client who is receiving treatment or habilitation in a 24-hour facility at all times keeps the right to:

(1) Make and receive confidential telephone calls. All long distance calls shall be paid for by the client at the time of making the call or made collect to the receiving party;

(2) Receive visitors between the hours of 8:00 a.m. and 9:00 p.m. for a period of at least six hours daily, two hours of which shall be after 6:00 p.m.; however visiting shall not take precedence over therapies;

(3) Communicate and meet under appropriate supervision with individuals of his own choice upon the consent of the individuals;

(4) Make visits outside the custody of the facility unless:

a. commitment proceedings were initiated as the result of the client's being charged with a violent crime, including a crime involving an assault with a deadly weapon, and the respondent was found not guilty by reason of insanity or incapable of proceeding;

b. the client was voluntarily admitted or committed to the facility while under order of commitment to a correctional facility of the Department of Correction; or

c. the client is being held to determine capacity to proceed pursuant to G.S. 15A-1002;

A court order may expressly authorize visits otherwise prohibited by the existence of the conditions prescribed by this subdivision;

(5) Be out of doors daily and have access to facilities and equipment for physical exercise several times a week;

(6) Except as prohibited by law, keep and use personal clothing and possessions;

(7) Participate in religious worship; (8) Keep and spend a reasonable sum of his own money; (9) Retain a driver's license, unless otherwise prohibited by Chapter 20 of the General Statutes; and

(10) Have access to individual storage space for his private use.

(c) In addition to the rights enumerated in G.S. 122C-51 through G.S. 122C-57 and G.S. 122C-59 through G.S. 122C-61, each minor client who is receiving treatment or habilitation in a 24- hour facility has the right to have access to proper adult supervision and guidance. In recognization of the minor's status as a developing individual, the minor shall be provided opportunities to enable him to mature physically, emotionally, intellectually, socially, and vocationally. In view of the physical, emotional, and intellectual immaturity of the minor, the 24-hour facility shall provide appropriate structure, supervision and control consistent with the rights given to the minor pursuant to this Article. The facility shall also, where practical, make reasonable efforts to ensure that each minor client receives treatment apart and separate from adult clients unless the treatment needs of the minor client dictate otherwise.

Each minor client who is receiving treatment or habilitation from a 24-hour facility has the right to:

(1) Communicate and consult with his parents or guardian or the agency or individual having legal custody of him;

(2) Contact and consult with, at his own expense or that of his legally responsible person and at no cost to the facility, legal counsel, private physicians, private mental health, mental retardation, or substance abuse professionals, of his or his legally responsible person's choice; and (3) Contact and consult with a client advocate, if there is a client advocate.

The rights specified in this subsection may not be restricted by the facility and each minor client may exercise these rights at all reasonable times.

(d) Except as provided in subsections (e) and (h) of this section, each minor client who is receiving treatment or habilitation in a 24-hour facility has the right to:

(1) Make and receive telephone calls. All long distance calls shall be paid for by the client at the time of making the call or made collect to the receiving party;

(2) Send and receive mail and have access to writing materials, postage, and staff assistance when necessary;

(3) Under appropriate supervision, receive visitors between the hours of 8:00 a.m. and 9:00 p.m. for a period of at least six hours daily, two hours of which shall be after 6:00 p.m.; however visiting shall not take precedence over school or therapies;

(4) Receive special education and vocational training in accordance with federal and State law;

(5) Be out of doors and participate in play, recreation, and physical exercise on a regular basis in accordance with his needs;

(6) Except as prohibited by law, keep and use personal clothing and possessions under appropriate supervision;

(7) Participate in religious worship; (8) Have access to individual storage space for the safekeeping of personal belongings;

(9) Have access to and spend a reasonable sum of his own money; and

(10) Retain a driver's license, unless otherwise prohibited by Chapter 20 of the General Statutes.

(e) No right enumerated in subsections (b) or (d) of this section may be limited or restricted except by the qualified professional responsible for the formulation of the client's treatment or habilitation plan. A written statement shall be placed in the client's record that indicates the detailed reason for the restriction. The restriction shall be reasonable and related to the client's treatment or habilitation needs. A restriction is effective for a period not to exceed 30 days. An evaluation of each restriction shall be conducted by the qualified professional at least every seven days, at which time the restriction may be removed. Each evaluation of a restriction shall be documented in the client's record. Restrictions on rights may be renewed only by a written statement entered by the qualified professional in the client's record that states the reason for the

renewal of the restriction. In the case of an adult client who has not been adjudicated incompetent, in each instance of an initial restriction or renewal of a restriction of rights, an individual designated by the client shall, upon the consent of the client, be notified of the restriction and of the reason for it. In the case of a minor client or an incompetent adult client, the legally responsible person shall be notified of each instance of an initial restriction or renewal of a restriction of rights and of the reason for it. Notification of the designated individual or legally responsible person shall be documented in writing in the client's record.

(f) The Commission may adopt rules to implement subsection (e) of this section.

(g) With regard to clients being held to determine capacity to proceed pursuant to G.S. 15A-1002 or clients in a facility for substance abuse, and notwithstanding the prior provisions of this section, the Commission may adopt rules restricting the rights set forth under (b)(2) and (d)(3) of this section if restrictions are necessary and reasonable in order to protect the health, safety, and welfare of the client involved or other clients.

(h) The rights stated in subdivisions (b)(2), (b)(4), (b)(5), (b)(10), (d)(3), (d)(5) and (d)(8) may be modified in a general hospital by that hospital to be the same as for other patients in that hospital; provided that any restriction of a specific client's rights shall be done in accordance with the provisions of subsection (e) of this section.

"**§ 122C-63. Assurance for continuity of care for individuals with mental retardation.–**(a) Any individual with mental retardation admitted for residential care or treatment for other than respite or emergency care to any residential facility operated under the authority of this Chapter and supported all or in part by State appropriated funds has the right to residential placement in an alternative facility if the client is in need of placement and if the original facility can no longer provide the necessary care or treatment.

(b) The operator of a residential facility providing residential care or treatment, for other than respite or emergency care, for individuals with mental retardation shall notify the area authority serving the client's county of residence of his intent to close a facility or to discharge a client who may be in need of continuing care at least 60 days prior to the closing or discharge.

The operator's notification to the area authority of intent to close a facility or to discharge a client who may be in need of continuing care constitutes the operator's acknowledgement of the obligation to continue to serve the client until:

(1) The area authority determines that the client is not in need of continuing care;

(2) The client is moved to an alternative residential placement; or

(3) Sixty days have elapsed; whichever occurs first.

In cases in which the safety of the client who may be in need of continuing care, of other clients, of the staff of the residential facility, or of the general public, is concerned, this 60-day notification period may be waived by securing an emergency placement in a more secure and safe facility. The operator of the residential facility shall notify the area authority that an emergency placement has been arranged within 24 hours of the placement. The area authority and the Secretary shall retain their respective responsibilities upon receipt of this notice.

(c) An individual who may be in need of continuing care may be discharged from a residential facility without further claim for continuing care against the area authority or the State if:

(1) After the parent or guardian, if the client is a minor or an adjudicated incompetent adult, or the client, if an adult not adjudicated incompetent, has entered into a contract with the operator upon the client's admission to the original residential facility the parent, guardian, or client who entered into the contract refuses to carry out the contract, or

(2) After an alternative placement for a client in need of continuing care is located, the parent or guardian who admitted the client to the residential facility, if the client is a minor or an

adjudicated incompetent adult, or the client if an adult not adjudicated incompetent, refuses the alternative placement.

(d) Decisions made by the area authority regarding the need for continued placement or regarding the availability of an alternative placement of a client may be appealed pursuant to the appeals process of the area authority and subsequently to the Secretary or the Commission under their rules. If the appeal process extends beyond the operator's 60-day obligation to continue to serve the client, the Secretary shall arrange a temporary placement in a State facility for the mentally retarded pending the outcome of the appeal.

(e) The area authority that serves the county of residence of the client is responsible for assessing the need for continuity of care and for the coordination of the placement among available public and private facilities whenever the authority is notified that a client may be in need of continuing care. If an alternative placement is not available beyond the operator's 60- day obligation to continue to serve the client, the Secretary shall arrange for a temporary placement in a State facility for the mentally retarded. The area authority shall retain responsibility for coordination of placement during a temporary placement in a State facility.

(f) The Secretary is responsible for coordinative and financial assistance to the area authority in the performing of its duties to coordinate placement so as to assure continuity of care and for assuring a continuity of care placement beyond the operator's 60-day obligation period.

(g) The area authority's financial responsibility, through local and allocated State resources, is limited to:

(1) Costs relating to the identification and coordination of alternative placements;

(2) If the original facility is an area facility, maintenance of the client in the original facility for up to 60 days; and

(3) Release of allocated categorical State funds used to support the care or treatment of the specific client at the time of alternative placement if the Secretary requires the release.

(h) In accordance with G.S. 143B-147(a)(1) the Commission shall develop programmatic rules to implement this section, and, in accordance with G.S. 122C-112(a)(6), the Secretary shall adopt budgetary rules to implement this section.

"**§ 122C-64. Human rights committees.–**Human rights committees responsible for protecting the rights of clients shall be established at each State facility and may be established for area authorities. The Commission shall adopt rules for the establishment of committees. These rules shall include the composition and duties of the committees and procedures for appointment of the members by the Secretary for State facilities and by the area board for area authorities.

"**§ 122C-65. Offenses relating to clients.–**(a) For the protection of clients receiving treatment or habilitation in a 24-hour facility, it is unlawful for any individual who is not a mentally retarded client in a facility:

(1) To assist, advise, or solicit, or to offer to assist, advise, or solicit a client of a facility to leave without authority;

(2) To transport or to offer to transport a client of a facility to or from any place without the facility's authority;

(3) To receive or to offer to receive a minor client of a facility into any place, structure, building, or conveyance for the purpose of engaging in any act that would constitute a sex offense, or to solicit a minor client of a facility to engage in any act that would constitute a sex offense;

(4) To hide an individual who has left a facility without authority; or

(5) To engage in, or offer to engage in an act with a client of a facility that would constitute a sex offense.

(b) Violation of this section is a misdemeanor and is punishable as provided in G.S. 14-3.

"**§ 122C-66. Protection from abuse and exploitation; reporting.–**(a) An employee of or a volunteer at a facility who, other than as a part of generally accepted medical or therapeutic procedure, knowingly causes pain or injury to a client or borrows or takes personal property from a client is guilty of a misdemeanor and is punishable as provided in G.S. 14-3. Any employee or volunteer who uses reasonable force to carry out the provisions of G.S. 122C-60 or to protect himself or others from a violent client does not violate this subsection.

(b) An employee of a facility who witnesses or has knowledge of a violation of subsection (a) or of an accidental injury to a client shall report the violation or accidental injury to authorized personnel designated by the facility. No employee making a report may be threatened or harassed by any other employee or volunteer on account of the report. Violation of this subsection is a misdemeanor punishable by a fine, not to exceed five hundred dollars ($500.00).

(c) The identity of an individual who makes a report under this section or who cooperates in an ensuing investigation may not be disclosed without his consent, except to persons authorized by the facility or by State or federal law to investigate or prosecute these incidents, or in a grievance or personnel hearing or civil or criminal action in which a reporting individual is testifying, or when disclosure is legally

compelled or authorized by judicial discovery. This subsection shall not be interpreted to require the disclosure of the identity of an individual where it is otherwise prohibited by law.

(d) An employee who makes a report in good faith under this section is immune from any civil liability that might otherwise occur for the report. In any case involving liability, making of a report under this section is prima facie evidence that the maker acted in good faith.

(e) The duty imposed by this section is in addition to any duty imposed by G.S. 7A-543 or G.S. 108A-102.

(f) The facility shall investigate or provide for the investigation of all reports made under the provisions of this section.

"**§ 122C-67. Other rules regarding abuse, exploitation, neglect not prohibited.–**G.S. 122C-66 does not prohibit the Commission from adopting rules for State and area facilities and does not prohibit other facilities from issuing policies regarding other forms of prohibited abuse, exploitation, or neglect.

"Article 4.

"Organization and System for Delivery of Mental Health, Mental Retardation, and Substance Abuse Services.

"Part 1. Policy.

"**§ 122C-101. Policy.–**Within the public system of mental health, mental retardation, and substance abuse services, there are both area and State facilities. An area authority is the locus of coordination among public services for clients of its catchment area. To assure the most appropriate and efficient care of clients within the publicly supported service system, area authorities are encouraged to develop and secure approval for a single portal of entry and exit policy for their catchment areas.

"Part 2. State, County and Area Authority.

"**§ 122C-111. Administration.–**The Secretary shall administer and enforce the provisions of this Chapter and the rules of the Commission and shall operate State facilities. An area director shall administer the programs of the area authority and enforce the rules of the area board, applicable State laws, rules of the Commission, and rules of the Secretary. The Secretary in cooperation with area directors and State facility directors shall provide for the coordination of services between area authorities and State facilities.

"**§ 122C-112. Powers and duties of the Secretary.–**(a) The Secretary shall:

(1) Enforce the provisions of this Chapter and the rules of the Commission and the Secretary;

(2) Assist counties and area authorities in the establishment and operation of community-based programs within catchment areas specified in rules adopted by the Commission;

(3) Operate State facilities and adopt rules pertaining to their operation;

(4) Promote a unified system of services for the citizens of this State by coordinating services provided in State facilities and area facilities;

(5) Approve the plans and budgets of an area authority and adopt rules pertaining to the content and format of these plans and budgets;

(6) Adopt rules governing the expenditure of all area authority funds;
(7) Adopt rules for the establishment of single portal designation and approve an area as a single portal area;
(8) Except as provided in G.S. 122C-26(4), adopt rules establishing procedures for waiver of rules adopted by the Secretary under this Chapter.
(9) Notify the clerks of superior court of changes in the designation of State facility regions and of facilities designated under G.S. 122C-252;
(10) Promote public awareness and understanding of mental health, mental illness, mental retardation, and substance abuse;
(11) Administer and enforce rules that are conditions of participation in federal or State financial aid; and
(12) Carry out G.S. 122C-361.

(b) The Secretary may:
(1) Acquire by purchase or otherwise in the name of the Department equipment, supplies, and other personal property necessary to carry out the mental health, mental retardation, and substance abuse programs;
(2) Sponsor training opportunities in the fields of mental health, mental retardation, and substance abuse;
(3) Promote and conduct research in the fields of mental health, mental retardation, and substance abuse;
(4) Provide technical assistance for the development and improvement of prevention services;
(5) Receive donations of money, securities, equipment, supplies, or any other personal property of any kind or description which shall be used by the Secretary for the purpose of carrying out mental health, mental retardation, and substance abuse programs. Any donations shall be reported to the Office of State Budget and Management as determined by that office;
(6) Accept, allocate, and spend any federal funds for mental health, mental retardation, and substance abuse activities that may be made available to the State by the federal government. This Chapter shall be liberally construed in order that the State and its citizens may benefit fully from these funds. Any federal funds received shall be deposited with the State Treasurer and shall be appropriated by the General Assembly for the mental health, mental retardation, or substance abuse purposes specified;
(7) Enter agreements authorized by G.S. 122C-346.

"**§ 122C-113. Cooperation between Secretary and other agencies.–**(a) The Secretary shall cooperate with other State agencies to coordinate services for the treatment and habilitation of individuals who are mentally ill, mentally retarded, or substance abusers. The Secretary shall also coordinate with these agencies to provide public education to promote a better understanding of mental illness, mental retardation, and substance abuse.

(b) The Secretary shall promote cooperation among area facilities, State facilities, and local agencies to facilitate the provision of services to individuals who are mentally ill, mentally retarded, or substance abusers.

(c) The Secretary shall adopt rules to assure this coordination.

"**§ 122C-114. Powers and duties of the Commission.–**The Commission shall have authority as provided by this Chapter, Chapters 90 and 148 of the General Statutes, and by G.S. 143B- 147.

"**§ 122C-115. Powers and duties of counties and cities.–**(a) Except as provided in G.S. 153A-77, a county shall provide mental health, mental retardation, and substance abuse services through an area authority.

(b) Counties and cities may appropriate funds for the support of programs that serve the catchment area, whether the programs are physically located within a single county or whether any facility housing a program is owned and operated by the city or county. Counties and cities may make appropriations for the purposes of this Chapter and may allocate for these purposes other revenues not restricted by law, and counties may fund them by levy of property taxes pursuant to G.S. 153A-149(c)(22).

(c) Within a catchment area designated by the Commission, a board of county commissioners or two or more boards of county commissioners jointly shall establish an area authority with the approval of the Secretary.

"**§ 122C-116. Status of area authority.–**An area authority is a local political subdivision of the State except that a single county area authority is considered a department of the county in which it is located for the purposes of Chapter 159 of the General Statutes.

"**§ 122C-117. Powers and duties of the area authority.–**(a) The area authority shall:

(1) Engage in comprehensive planning, budgeting, implementing, and monitoring of community-based mental health, mental retardation, and substance abuse services;

(2) Provide services to clients in the catchment area; (3) Determine the needs of the area authority's clients and coordinate with the Secretary the provision of services to clients through area and State facilities;

(4) Develop plans and budgets for the area authority subject to the approval of the Secretary;

(5) Assure that the services provided by the area authority meet the rules of the Commission and Secretary;

(6) Comply with federal requirements as a condition of receipt of federal grants; and

(7) Appoint an area director.

(b) The governing unit of the area authority is the area board. All powers, duties, functions, rights, privileges, or immunities conferred on the area authority may be exercised by the area board.

"**§ 122C-118. Structure of area board.–**(a) An area board shall have no less than 15 members and no more than 25 members. The size of the area board may be changed from time to time as follows:

(1) In a single-county area, by the board of county commissioners;

(2) In a multi-county area by agreement of the boards of county commissioners of all the counties in the catchment area. The agreement shall be evidenced by concurrent resolutions adopted by the affected boards of county commissioners.

(b) In a single county area, the board of county commissioners shall appoint the members of the area board who may be removed with or without cause.

(c) In areas consisting of more than one county, each board of county commissioners within the area shall appoint one commissioner as a member of the area board. These members shall appoint the other members. A member may be removed, with or without cause, by the group authorized to make the initial appointment.

(d) The group of county commissioners authorized to make appointments to the area board shall appoint new members to the area board to fill vacancies occurring on the board before the end of the appointed term of office. These appointments are for the rest of the unexpired term of office.

(e) The area board shall include:

(1) At least one county commissioner from each county in the area except that in a single-county area authority the board of commissioners may instead appoint any resident of the county;

(2) At least two physicians licensed under Chapter 90 of the General Statutes to practice medicine in North Carolina;

(3) At least one professional representative from the fields either of psychology, social work, nursing, or religion;

(4) At least one individual each representing the interests of or from citizens' organizations representing the interests of individuals with:

a. Mental illness;

b. Mental retardation;

c. Alcoholism; and

d. Drug abuse;

(5) At least one representative from local hospitals or area planning organizations; and

(6) At least one attorney licensed to practice in North Carolina.

(f) Any member of an area board who is a county commissioner serves on the board in an ex officio capacity. The terms of county commissioners on an area board are concurrent with their terms as county commissioners. The terms of the other members on the area board shall be for four years, except that upon the initial formation of an area board one fourth shall be appointed for one year, one fourth for two years, one fourth for three years, and all remaining members for four years.

"**§ 122C-119. Organization of area board.–**(a)The area board shall meet at least six times per year.

(b) Meetings shall be called by the area board chairman or by three or more members of the board after notifying the area board chairman in writing.

(c) Members of the area board elect the board's chairman. The term of office of the area board chairman shall be one year. A county commissioner area board member may serve as the area board chairman.

"**§ 122C-120. Compensation of area board members.–**(a) Area board members may receive as compensation for their services per diem and a subsistence allowance for each day during which they are engaged in the official business of the area board. The amount of the per diem and subsistence allowances shall be established by the area board and the amounts shall not exceed those authorized by G.S. 138-5 for State boards.

(b) Area board members may be reimbursed for all necessary travel expenses and registration fees in amounts fixed by the board.

"**§ 122C-121. Area director.–**The area director is an employee of the area board and shall serve at the pleasure of the area board. The director is responsible for the staff appointments, for implementation of the policies and programs of the board in compliance with rules of the Commission and the Secretary, and for the supervision of all service programs and staff.

"**§ 122C-122. Public guardians.–**The officers and employees of the Division, or any successor agency, and the area director or any officer or employee of an area authority designated by the area board, or any officer or employee of any area facility designated by the area board, may, if they are a disinterested public agent as defined by G.S. 35-1.7(4), serve as guardians for adults adjudicated incompetent under the provisions of Article 1A of Chapter 35 of the General Statutes, and they shall so act if ordered to serve in that capacity by the clerk of superior court having jurisdiction of a guardianship proceeding brought under that Article. Bond shall be required or purchased as provided by G.S. 35-1.19.

"Part 3. Service Delivery System.

"**§ 122C-131. Composition of system.–**Mental health, mental retardation, and substance abuse services of the public system in this State shall be delivered through area authorities and State facilities.

"**§ 122C-132. Single portal of entry and exit designation.–**(a) The public system should provide for a single portal of entry and exit policy. In order to accomplish this objective, an area authority desiring designation as a single portal area shall present to the Secretary a single portal of entry and exit plan approved by the area board. The decision as to whether to choose to submit a plan is in the discretion of the area authority after weighing the policy goal stated in this subsection and in G.S. 122C-101.

(b) In order for a single portal area to be designated, the single portal of entry and exit plan shall be subject to approval by the Secretary. Once an area is designated by the Secretary as a single portal area, any changes to the plan shall be subject to approval by the Secretary. However, an approved plan and designation as a single portal area shall remain in force pending approval of any changes.

(c) The plan shall include but not be limited to:

(1) A specific listing of facilities to be covered by the single portal of entry and exit plan;

(2) Procedures for review of individuals to be admitted to or discharged from State and area facilities;

(3) Procedures for shared responsibility when individuals are admitted directly to a State facility;

(4) Evidence of incorporation of these plans within the contracts between the area authority and the State facilities as required by G.S. 122C-143(c) and with other public and private agencies as required in G.S. 122C-141;

(5) Evidence of cooperative arrangements with local law enforcement, local courts, and the local medical society; and

(6) Procedures for review of citizen complaints.

(d) Residents of a county in a designated single portal area shall be admitted to or discharged from State and area facilities through the area authority as described in the area's single portal of entry and exit policy.

"Part 4. Area Facilities.

"**§ 122C-141. Provision of services.–**(a) The area authority may provide services directly and may contract with other public or private agencies, institutions, or resources for the provision of services.

(b) All area authority services provided directly or under contract shall meet the requirements of applicable State statutes and the rules of the Commission and the Secretary. The Secretary may delay payments and, with written notification of cause, may reduce or deny payment of funds if an area authority fails to meet these requirements.

"**§ 122C-142. Contract for services.–**(a) When the area authority contracts with persons for the provision of services, the area authority shall assure that these contracted services meet the requirements of applicable State statutes and the rules of the Commission and the Secretary. Terms of the contract shall require the area authority to monitor the contract to assure that rules and State statutes are met. The Secretary may also monitor contracted services to assure that rules and State statutes are met.

(b) When the area authority contracts for services, it may provide funds to purchase liability insurance, to provide legal representation, and to pay any claim with respect to liability for acts, omissions, or decisions by members of the boards or employees of the persons with whom the area authority contracts. These acts, omissions, and decisions shall be ones that arise out of the performance of the contract and may not result from actual fraud, corruption, or actual malice on the part of the board members or employees.

"**§ 122C-143. Plans and budgets required by the Secretary.–**(a) Subject to the rules of the Secretary, area authorities shall develop and submit plans and budgets, including annual plans and budgets that provide for the delivery of services to residents of the catchment area.

(b) The annual plan and budget shall include an inventory of existing services, a description of the needs of catchment area residents, and major actions to be completed by the area authority to meet the identified needs. It shall also include strategies consistent with Parts 7 and 8 of Article 5 of this Chapter for maximum utilization of area facilities.

(c) The annual plan and budget shall include a plan for contracting with those State facilities designated to serve residents of the catchment area.

(d) The annual plan and budget shall show the planned spending of all local, State, and federal funds for each service according to the source of the funds.

(e) In addition to annual plans and budgets, the Secretary may require area authorities to develop with State facilities joint long-range plans that identify needs and resources to address those needs in the least restrictive setting, if the least restrictive setting is therapeutically most appropriate, and that provide a method for coordination of services.

(f) Plans and budgets and subsequent changes are subject to approval by the Secretary. If the Secretary disapproves a plan and budget or subsequent changes, the Secretary may delay payments and with written notification of cause may reduce or deny payment of funds. If the Secretary later approves the plan and budget or subsequent changes, restoration of funds is within the discretion of the Secretary.

"**§ 122C-144. Reports.–**(a) Periodically as specified by the Secretary by rule, each area authority shall provide the Secretary and the board or boards of county commissioners with:

(1) A budget report that indicates receipts and expenditures for the total area authority according to a reporting format prescribed by the Secretary. This format shall conform as nearly as practical to the recommended budget format of the Local Government Commission under the provisions of the Local Government Budget and Fiscal Control Act, Article 3 of Chapter 159 of the General Statutes; and

(2) An audit report prepared by an independent certified public accountant, which report may be made by the county independent certified public accountant as a part of the county's normal annual audit if satisfactory to the Secretary.

(b) The Secretary may require reports of activities and services of the area authority, but the reports may not identify individual clients of the area authority unless specifically required by State statute, federal statute or regulation, or unless valid consent for the release has been given by the client or legally responsible person.

(c) Reports required of the area authority by the Secretary shall be reviewed by the Secretary biennially, and only those reports considered necessary by the Secretary shall thereafter be required.

(d) If an area authority fails to file required reports within the time limit set by the Secretary, the Secretary may:

(1) delay payments; and (2) with written notification of cause and subject to an appeal as provided by G.S. 122C-145, may reduce or deny payment of funds.

"**§ 122C-145. Appeal by area authorities.–**(a) The area authority may appeal to the Commission any action regarding rules under the jurisdiction of the Commission or rules under the joint jurisdiction of the Commission and the Secretary.

(b) The area authority may appeal to the Secretary any action regarding rules under the jurisdiction of the Secretary.

(c) Appeals shall be conducted according to rules adopted by the Commission and Secretary and in accordance with Chapter 150A of the General Statutes.

"**§ 122C-146. Fee for service.–**The area authority and its contractual agencies shall prepare fee schedules for services and shall make every reasonable effort to collect appropriate reimbursement for costs in providing these services from individuals able to pay, including insurance and third-party payment. However, no individual may be refused services because of an inability to pay. All funds collected from fees from area authority operated services shall be used for the fiscal operation or capital improvements of the area authority's programs. The collection of fees by an area authority may not be used as justification for reduction or replacement of the budgeted commitment of local tax revenue.

"**§ 122C-147. Allocation of funds to area authorities.–**(a) All State and federal funds appropriated within the Department's budget for area mental health, mental retardation, and substance abuse services shall be allocated to area authorities in accordance with the annual plan and budget adopted by the area authority and approved by the Secretary. An area authority may receive and allocate non-State resources for capital purchases, capital improvements, and equipment acquisitions if the expenditures are made in the support of the annual plan. The final share of State and federal funds shall be allocated on the basis of actual expenditures and reported in a way prescribed by the Secretary. Unspent State and federal funds shall be remitted to the Department within 60 days after the date that a certified audit is rendered as required by the Local Government Commission. If an audit is not submitted to the State within five days of the due date for the audit as approved by the Local Government Commission, Department funds for the area authority may be withheld by the Secretary until the audit is submitted.

(b) Unless otherwise specified by the Secretary, State appropriations to area authorities shall be used exclusively for the operating costs of the area authority; provided however:

(1) The Secretary may specify that designated State funds may be used by area authorities (i) for the purchase, alteration, improvement, or rehabilitation of real estate to be used as a residential facility or (ii) in contracting with a private, nonprofit corporation that operates residential facilities for the mentally ill, mentally retarded, or substance abusers and according to the terms of the contract between the area authority and the private, nonprofit corporation, for the purchase, alteration, improvement, rehabilitation of real estate or, to make a lump sum down payment or periodic payments on a real property mortgage in the name of the private, nonprofit corporation.

(2) Upon cessation of the use of the residential facility by the area authority, if operated by the area authority, or upon termination, default, or nonrenewal of the contract if operated by a contractual agency, the Department shall be reimbursed in accordance with rules adopted by the Secretary for the Department's participation in the purchase of the residential facility.

(c) All real property purchased for use by the area authority shall be provided by local or federal funds unless otherwise allowed under subsection (b) of this section. The

title to this real property and the authority to acquire it is held by the county where the property is located. The authority to hold title to real property and the authority to acquire it may be held by the area authority with the consent of the board or boards of commissioners of all the counties which comprise the area authority. The consent to this variation shall be by resolution of the affected board or boards of county commissioners and may have any necessary or proper conditions, including provisions for distribution of the proceeds in the event of disposition of the property by the area authority.

(d) The area authority may lease real property. (e) Equipment necessary for the operation of the area authority may be obtained with local, State, federal, or donated funds, or a combination of these.

(f) The area authority may acquire or lease personal property, including by lease-purchase agreement. Title to personal property may be held by the area authority.

(g) All area authority funds shall be spent in accordance with the rules of the Secretary. Failure to comply with the rules is grounds for the Secretary to stop participation in the funding of the particular program. The Secretary may withdraw funds from a specific program of services not being administered in accordance with an approved plan and budget after written notice and subject to an appeal as provided by G.S. 122C-145 and Chapter 150A of the General Statutes.

(h) Notwithstanding subsection (b) of this section and in addition to the purposes listed in that subsection, the funds allocated by the Secretary for services for members of the class identified in Willie M., et al. vs. Hunt, et al. (C-C-79-294, Western District) may be used for the purchase, alteration, improvement, or rehabilitation of real property owned or to be owned by a nonprofit corporation and used or to be used as a facility.

(i) Notwithstanding subsection (c) of this section and in addition to the purposes listed in that subsection, funds allocated by the Secretary for services for members of the class identified in Willie M., et al. vs. Hunt, et al. (C-C-79-294, Western District) may be used for the purchase, alteration, improvement, or rehabilitation of real property used by an area authority as long as the title to the real property is vested in the county where the property is located or is vested in another governmental entity. If the property ceases to be used in accordance with the annual plan, the unamortized part of funds spent under this subsection for the purchase, alteration, improvement, or rehabilitation of real property shall be returned to the Department, in accordance with the rules of the Secretary.

(j) Notwithstanding subsection (c) of this section the area authority, with the approval of the Secretary, may use local funds for the alteration, improvement, and rehabilitation of real property owned by a nonprofit corporation under contract with the area authority and used or to be used as a residential facility. Prior to the use of county appropriated funds for this purpose, the area authority must obtain consent of the board or boards of commissioners of all the counties which comprise the area authority. The consent shall be by resolution of the affected board or boards of county commissioners and may have any necessary or proper conditions, including provisions for distribution of the proceeds in the event of disposition of the property.

"**§ 122C-148. Allocations to be made annually; base grant; additional allocations.–** Subject to the provisions of this Article, allocations shall be made annually by the

Secretary to area authorities for the provision of community-based services. Provided sufficient funds are appropriated, the allocations shall be made in the form of a base grant computed on the basis of one thousand two hundred dollars ($1,200) per 1,000 population within the catchment area. Additional allocations may be made to area authorities on the conditions and formula bases provided by G.S. 122C-147 through G.S. 122C-151.

"**§ 122C-149. Allocation of matching funds to area authorities.–**(a) State appropriated matching funds shall be distributed subject to rules of the Secretary which set a formula based on the relative fiscal capacity of the county to fund mental health, mental retardation, and substance abuse services. The rules shall be reviewed biennially by the Secretary. Area authority funds used for matching State funds shall include fees from services including Medicare and the local and federal share of Medicaid receipts, fees from agencies under contract, gifts and donations, and county and municipal funds. Except as specifically provided, area financial participation to match State allocations may not include State or federal funds.

(b) Area authorities may not use funds received under G.S. 20- 179.2(f) or G.S. 90-96.01(a)(4) to match funds under this section.

"**§ 122C-150. Direct grants for services.–**In addition to the allocations provided in G.S. 122C-148 and G.S. 122C-149, the Department shall make direct grants to area authorities from State and federal funds appropriated for special programs. The grants shall be for the treatment of individuals by area facilities rather than in State facilities and shall be administered as provided in G.S. 122C-147.

"**§ 122C-151. Responsibilities of those receiving appropriations.–**All resources allocated to and received by any area authority and used for programs of mental health, mental retardation, substance abuse or other related fields are subject to the conditions specified in this Article and to the rules of the Commission and the Secretary.

"**§ 122C-152. Liability insurance and waiver of immunity as to torts of agents, employees, and board members.–**(a) An area authority, by securing liability insurance as provided in this section, may waive its governmental immunity from liability for damage by reason of death or injury to person or property caused by the negligence or tort of any agent, employee, or board member of the area authority when acting within the scope of his authority or within the course of his duties or employment. Governmental immunity is waived by the act of obtaining this insurance, but it is waived only to the extent that the area authority is indemnified by insurance for the negligence or tort.

(b) Any contract of insurance purchased pursuant to this section shall be issued by a company or corporation licensed and authorized to execute insurance contracts in this State and shall by its terms adequately insure the area authority against any and all liability for any damages by reason of death or injury to a person or property proximately caused by the negligent acts or torts of the agents, employees, and board members of the area authority when acting within the course of their duties or employment. The area board shall determine the extent of the liability and what agents, employees by class, and board members are covered by any insurance purchased pursuant to this subsection. Any company or corporation that enters into a contract of

insurance as described in this section with the authority, by this act waives any defense based upon the governmental immunity of the area authority.

(c) Any persons sustaining damages, or, in the case of death, his personal representative, may sue an area authority insured under this section for the recovery of damages in any court of competent jurisdiction in this State, but only in a county located within the geographic limits of the authority. It is no defense to any action that the negligence or tort complained of was in pursuance of a governmental or discretionary function of the area authority if, and to the extent that, the authority has insurance coverage as provided by this section.

(d) Except as expressly provided by subsection (c) of this section, nothing in this section deprives any area authority of any defense whatsoever to any action for damages or to restrict, limit, or otherwise affect any defense which the area authority may have at common law or by virtue of any statute. Nothing in this section relieves any person sustaining damages nor any personal representative of any decedent from any duty to give notice of a claim to the area authority or to commence any civil action for the recovery of damages within the applicable period of time prescribed or limited by statute.

(e) The area authority may incur liability pursuant to this section only with respect to a claim arising after the authority has procured liablity insurance pursuant to this section and during the time when the insurance is in force.

(f) No part of the pleadings that relate to or allege facts as to a defendant's insurance against liability may be read or mentioned in the presence of the trial jury in any action brought pursuant to this section. This liability does not attach unless the plaintiff waives the right to have all issues of law or fact relating to insurance in the action determined by a jury. These issues shall be heard and determined by the judge, and the jury shall be absent during any motions, arguments, testimony, or announcement of findings of fact or conclusions of law with respect to insurance.

"**§ 122C-153. Defense of agents, employees, and board members.–**(a) Upon request made by or in behalf of any agent, employee, or board member or former agent, employee, or board member of the area authority, any area authority may provide for the defense of any civil or criminal action or proceeding brought against him either in his official or in his individual capacity, or both, on account of any act done or omission made, or any act allegedly done or omission allegedly made, in the scope and course of his duty as an agent, employee, or board member. The defense may be provided by the local board by employing counsel or by purchasing insurance that requires that the insurer provide the defense. Nothing in this section requires any area authority to provide for the defense of any action or proceeding of any nature.

(b) An area authority may budget funds for the purpose of paying all or part of the claim made or any civil judgment entered against any of its agents, employees, or board members or former agents, employees, or board members when a claim is made or judgment is rendered as damages on account of any act done or omission made, or any act allegedly done or omission allegedly made, in the scope and course of his duty as an agent, employee, or board member of the area authority. Nothing in this section shall authorize any area authority to budget funds for the purpose of paying any claim

made or civil judgment against any of its agents, employees, or board members, or former agents, employees, or board members, if the authority finds that the agent, employee, or board member acted or failed to act because of actual fraud, corruption, or actual malice on his part. Any authority may budget for and purchase insurance coverage for payment of claims or judgments pursuant to this section. Nothing in this section requires any authority to pay any claim or judgment referred to, and the purchase of insurance coverage for payment of the claim or judgment may not be considered an assumption of any liability not covered by the insurance contract and may not be deemed an assumption of liability or payment of any claim or judgment in excess of the limits of coverage in the insurance contract.

(c) Subsection (b) of this section does not authorize an authority to pay all or part of a claim made or civil judgment entered or to provide a defense to a criminal charge unless (i) notice of the claim or litigation is given to the area authority before the time that the claim is settled or civil judgment is entered; and (ii) the area authority has adopted, and made available for public inspection, uniform standards under which claims made, civil judgments entered, or criminal charges against agents, employees, or board members or former agents, employees, or board members shall be defended or paid.

(d) The board or boards of county commissioners that establish the area authority and the Secretary may allocate funds not otherwise restricted by law, in addition to the funds allocated for the operation of the program, for the purpose of paying legal defense, judgments, and settlements under this section.

"**§ 122C-154. Personnel.–**Employees under the direct supervision of the area authority are employees of the area authority. For the purpose of personnel administration, Chapter 126 of the General Statutes applies unless otherwise provided in this Article.

"**§ 122C-155. Supervision of services.–**Unless otherwise specified, client services are the responsibility of a qualified professional. Direct medical and psychiatric services shall be provided by a qualified psychiatrist or a physician with adequate training and experience acceptable to the Secretary.

"**§ 122C-156. Salary plan for employees of the area authority.–**(a) The area authority shall establish a salary plan which shall set the salaries for employees of the area authority. The salary plan shall be in compliance with Chapter 126 of the General Statutes. In a multi-county area, the salary plan shall not exceed the highest paying salary plan of any county in that area. In a single-county area, the salary plan shall not exceed the county's salary plan. The salary plan limitations set forth in this section may be exceeded only if the area authority and the board or boards of county commissioners, as the case may be, jointly agree to exceed these limitations.

(b) An area authority may purchase life insurance or health insurance or both for the benefit of all or any class of authority officers or employees as a part of its compensation. An area authority may provide other fringe benefits for authority officers and employees.

(c) An area authority that is providing health insurance under subsection (b) of this section may provide health insurance for all or any class of former officers and employees of the area authority who are receiving benefits under Article 3 of Chapter

128 of the General Statutes. Health insurance may be paid entirely by the area authority, partly by the area authority and former officer or employee, or entirely by the former officer or employee, at the option of the area board.

"**§ 122C-157. Establishment of a professional reimbursement policy.–**The area authority shall adopt and enforce a professional reimbursement policy. This policy shall (i)require that fees for the provision of services received directly under the supervision of the area authority shall be paid to the area authority,(ii) prohibit employees of the area authority from providing services on a private basis which require the use of the resources and facilities of the area authority, and (iii) provide that employees may not accept dual compensation and dual employment unless they have the written permission of the area authority.

"**§ 122C-158. Privacy of personnel records.–**(a) Notwithstanding the provisions of G.S. 132-6 or any other State statute concerning access to public records, personnel files of employees or applicants for employment maintained by an area authority are subject to inspection and may be disclosed only as provided by this section. For purposes of this section, an employee's personnel file consists of any information in any form gathered by the area authority with respect to that employee, including his application, selection or nonselection, performance, promotions, demotions, transfers, suspensions and other disciplinary actions, evaluation forms, leave, salary, and termination of employment. As used in this section, 'employee' includes former employees of the area authority.

(b) The following information with respect to each employee is a matter of public record: name; age; date of original employment or appointment to the area authority; current position title; current salary; date and amount of most recent increase or decrease in salary; date of the most recent promotion, demotion, transfer, suspension, separation, or other change in position classification; and the office to which the employee is currently assigned. The area authority shall determine in what form and by whom this information will be maintained. Any person may have access to this information for the purpose of inspection, examination, and copying during regular business hours, subject only to rules for the safekeeping of public records as the area authority may have adopted. Any person denied access to this information may apply to the appropriate division of the General Court of Justice for an order compelling disclosure, and the court shall have jurisdiction to issue these orders.

(c) All information contained in an employee's personnel file, other than the information made public by subsection (b) of this section, is confidential and is open to inspection only in the following instances:

(1) The employee or an authorized agent may examine portions of his personnel file except (i) letters of reference solicited before employment, and (ii) information concerning a medical disability, mental or physical, that a prudent physician would not divulge to a patient.

(2) A licensed physician designated in writing by the employee may examine the employee's medical record.

(3) An area authority employee having supervisory authority over the employee may examine all material in the employee's personnel file.

(4) By order of a court of competent jurisdiction, any person may examine the part of an employee's personnel file that is ordered by the court.

(5) An official of an agency of the State or federal government, or any political subdivision of the State, may inspect any part of a personnel file pursuant to G.S. 122C-25(b) or G.S. 122C-192(a) or when the inspection is considered by the official having custody of the records to be inspected to be necessary and essential to the pursuance of a proper function of the inspecting agency. No information may be divulged for the purpose of assisting in a criminal prosecution of the employee or for the purpose of assisting in an investigation of the employee's tax liability. However, the official having custody of the records may release the name, address, and telephone number from a personnel file for the purpose of assisting in a criminal investigation.

(6) An employee may sign a written release, to be placed with the employee's personnel file, that permits the person with custody of the file to provide, either in person, by telephone or by mail, information specified in the release to prospective employers, educational institutions, or other persons specified in the release.

(7) The area authority may tell any person of the employment or nonemployment, promotion, demotion, suspension, or other disciplinary action, reinstatement, transfer, or termination of an employee and the reasons for that personnel action. Before releasing the information, the area authority shall determine in writing that the release is essential to maintaining public confidence in the administration of services or to maintaining the level and quality of services. This written determination shall be retained as a record for public inspection and shall become part of the employee's personnel file.

(d) Even if considered part of an employee's personnel file, the following information need not be disclosed to an employee nor to any other person:

(1) Testing or examination material used solely to determine individual qualifications for

appointment, employment, or promotion in the area authority service, when disclosure would compromise the objectivity or the fairness of the testing or examination process.

(2) Investigative reports or memoranda and other information concerning the investigation of possible criminal action of an employee, until the investigation is completed and no criminal action taken, or until the criminal action is concluded.

(3) Information that might identify an undercover law enforcement officer or a law enforcement informer.

(4) Notes, preliminary drafts, and internal communications concerning an employee. In the event these materials are used for any official

personnel decision, then the employee or an authorized agent has a right to inspect these materials.

(e) The area authority may permit access, subject to limitations it may impose, to selected personnel files by a professional representative of a training, research, or academic institution if that representative certifies that he will not release information identifying the employees whose files are opened and that the information will be used solely for statistical, research, or teaching purposes. This certification shall be retained by the area authority as long as each personnel file so examined is retained.

(f) The area authority that maintains personnel files containing information other than the information mentioned in subsection (b) of this section shall establish procedures whereby an employee who objects to material in the employee's file on grounds that it is inaccurate or misleading may seek to have the material removed from the file or may place in the file a statement relating to the material.

(g) Permitting access, other than that authorized by this section, to a personnel file of an employee of an area authority is a misdemeanor and is punishable by a fine, not to exceed five hundred dollars ($500.00).

(h) Anyone who, knowing that he is not authorized to do so, examines, removes, or copies information in a personnel file of an employee of an area authority is guilty of a misdemeanor and is punishable by a fine, not to exceed five hundred dollars ($500.00).

"Part 5. State Facilities.

"**§ 122C-181. Secretary's jurisdiction over State Facilities.–** (a) Except as provided in subsection (b) of this section, the Secretary shall operate the following facilities:

(1) for the mentally ill:
  a. Cherry Hospital;
  b. Dorothea Dix Hospital;
  c. John Umstead Hospital; and
  d. Broughton Hospital; and
(2) for the mentally retarded:
  a. Caswell Center;
  b. O'Berry Center;
  c. Murdoch Center;
  d. Western Carolina Center; and
  e. Black Mountain Center; and
(3) for substance abusers:
  a. Walter B. Jones Alcoholic Rehabilitation Center;
  b. Alcoholic Rehabilitation Center at Butner; and
  c. Alcoholic Rehabilitation Center at Black Mountain; and
(4) as special care facilities:
  a. Wilson Special Care Center;
  b. Whitaker School; and
  c. Wright School

(b) The Secretary may, with the approval of the Governor and Council of State, close any State facility.

"**§ 122C-182. Authority to contract with area authorities.–**To establish a coordinated system of services for its clients, a State facility shall contract with an area authority. Contracted services shall meet the rules of the Commission and the Secretary.

"**§ 122C-183. Appointment of employees as police officers who may arrest without warrant.–**The director of each State facility may appoint as special police officers the number of employees of their respective facilities they consider necessary. Within the grounds of the State facility the employees appointed as special police officers have all the powers of police officers of cities. They have the right to arrest without warrant individuals committing violations of the State law or the ordinances or rules of that facility in their presence and to bring the offenders before a magistrate who shall proceed as in other criminal cases.

"**§ 122C-184. Oath of special police officers.–**Before exercising the duties of a special police officer, the employees appointed under G.S. 122C-183 shall take an oath or affirmation of office before an officer empowered to administer oaths. The oath or affirmation shall be filed with the records of the Department. The oath or affirmation of office is:

State of North Carolina: _____County.

I, _____, do solemnly swear (or affirm) that I will well and truly execute the duties of office of special police officer in and for the State facility called _____, according to the best of my skill and ability and according to law; and that I will use my best endeavors to enforce all the ordinances of said facility, and to suppress nuisances, and to suppress and prevent disorderly conduct within these grounds. So help me, God. Sworn and subscribed before me, this _____day of _____, A.D._____

"**§ 122C-185. Application of funds belonging to State facilities.–**(a) All monies and proceeds of property donated to any State facility shall be deposited into the State treasury and accounted for in the appropriate fund as determined by the Secretary and approved by the Office of State Budget and Management. All monies and proceeds of property donated in which there are special directions for their application and the interest earned on these funds shall be spent as the donor has directed and except as required for deposit with the State Treasury, shall not be subject to the provisions of the Executive Budget Act except for capital improvements projects which shall be authorized and executed in accordance with G.S. 143-18.1.

(b) Proceeds from the transfer or sale of surplus, obsolete, or unused equipment of State facilities shall be deposited and accounted for in accordance with G.S. 143-49(4).

(c) The net proceeds from the sale, lease, rental, or other disposition of real estate owned by a State facility shall be deposited and accounted for in accordance with G.S. 146-30.

(d) All proceeds from the operation of vending facilities as defined in G.S. 111-42(d) and operated by State facilities shall be deposited and accounted for in accordance with G.S. 143-12.1.

(e) All other revenues and other receipts collected by a State facility shall be deposited to the credit of the State Treasury in accordance with G.S. 147-77.

"**§ 122C-186. General Assembly visitors of State facilities.–** The members of the General Assembly are ex officio visitors of all State facilities, provided that the common law right of visitation of a State facility is abrogated to the extent that it does not include the right to access to confidential information. This right of access is only as granted by statute.

"Part 6. Quality Assurance.

"**§ 122C-191. Quality of services.–**(a) The assurance that services provided are of the highest possible quality within available resources is an obligation of the area authority and the Secretary.

(b) Each area authority and State facility shall comply with the rules of the Commission regarding quality assurance activities, including: program evaluation; utilization and peer review; and staff qualifications, privileging, supervision, education, and training. These rules may not nullify compliance otherwise required by Chapter 126 of the General Statutes.

(c) Each area authority and State facility shall develop internal processes to monitor and evaluate the level of quality obtained by all its programs and services including the activities prescribed in the rules of the Commission.

(d) The Secretary shall develop rules for a review process to monitor area facilities and State facilities for compliance with the required quality assurance activities as well as other rules of the Commission and the Secretary.

"**§ 122C-192. Review and protection of information.–**(a) Notwithstanding G.S. 8-53, G.S. 8-53.3 or any other law relating to confidentiality of communications involving a patient or client, as needed to ensure quality assurance activities, the Secretary may review any writing or other record concerning the admission, discharge, medication, treatment, medical condition, or history of a client of an area authority or State facility. The Secretary may also review the personnel records of employees of an area authority or State facility.

(b) An area authority, State facility, its employees, and any other individual interviewed in the course of an inspection are immune from liability for damages resulting from disclosure of any information to the Secretary.

Except as required by law, it is unlawful for the Secretary or his representative to disclose:

(1) Any confidential or privileged information obtained under this section unless the client or his legally responsible person authorizes disclosure in writing; or

(2) The name of anyone who has furnished information concerning an area authority or State facility without that individual's consent.

Violation of this subsection is a misdemeanor punishable by a fine, not to exceed five hundred dollars ($500.00).

(c) The Secretary shall adopt rules to ensure that unauthorized disclosure does not occur.

(d) All confidential or privileged information obtained under this section and the names of individuals providing such information are not public records under Chapter 132 of the General Statutes.

"Article 5.

"Procedures for Admission and Discharge of Clients.

"Part 1. General Provisions.

"**§ 122C-201. Declaration of policy.–**It is State policy to encourage voluntary admissions to facilities. It is further State policy that no individual shall be involuntarily committed to a 24-hour facility unless he is mentally ill or a substance abuser and dangerous to himself or others, or unless he is mentally retarded and, because of an accompanying behavior disorder, is dangerous to others. All admissions and commitments shall be accomplished under conditions that protect the dignity and constitutional rights of the individual.

It is further State policy that, except as provided in G.S. 122C-212(b), individuals who have been voluntarily admitted shall be discharged upon application and that involuntarily committed individuals shall be discharged as soon as a less restrictive mode of treatment is appropriate.

"**§ 122C-202. Applicability of Article.–**This Article applies to all facilities unless expressly provided otherwise. Specific provisions that are delineated by the disability of the client, whether mentally ill, mentally retarded, or substance abuser, also apply to all facilities for that client's disability. Provisions that refer to a specific facility or type of facility apply only to the designated facility or facilities.

"**§ 122C-202.1. Hospital privileges.–**Nothing in this Article related to admission, commitment, or treatment shall be deemed to mandate hospitals to grant or deny to any individuals privileges to practice in hospitals.

"**§ 122C-203. Admission or commitment and incompetency proceedings to have no effect on one another.–**The admission or commitment to a facility of an alleged mentally ill individual, an alleged substance abuser, or an alleged mentally retarded individual under the provisions of this Article shall in no way affect incompetency proceedings as set forth in Chapters 33 or 35 of the General Statutes and incompetency proceedings under those Chapters shall have no effect upon admission or commitment proceedings under this Article.

"**§ 122C-204. Civil liability for corruptly attempting admission or commitment.–**Nothing in this Article relieves from liability in any suit instituted in the courts of this State any individual who unlawfully, maliciously, and corruptly attempts to admit or commit any individual to any facility under this Article.

"**§ 122C-205. Return of clients to 24-hour facilities.–**(a) When a client of a 24-hour facility who:

(1) Has been involuntarily committed;
(2) Is being detained pending a judicial hearing;
(3) Has been voluntarily admitted but is a minor or incompetent adult;
(4) Has been placed on conditional release from the facility; or
(5) Is a competent adult who has been voluntarily admitted and who, in the opinion of the responsible professional at the facility involved is currently dangerous to himself or others escapes or breaches the condition of his release, if applicable, the responsible professional shall immediately notify the appropriate law enforcement officer of the

county of residence of the client, the appropriate law enforcement officer of the county where the facility is located, and, if applicable, shall have recorded in the client's record the condition of release that has been breached. If there are reasonable grounds to believe that the client is in any county other than his county of residence, the responsible professional shall also notify the appropriate law enforcement officer of that county. Upon receipt of notice, the law enforcement officer shall take the client into custody and have the client returned to the facility from which the client has escaped or has been conditionally released. Transportation of the client back to the facility shall be provided in the same manner as described in G.S. 122C-251. Law enforcement officers notified of a client's escape or breach of conditional release shall be notified of his return.

(b) The responsible professional shall also notify:

(1) The next of kin or legally responsible person;

(2) The clerk of superior court of the county of residence of the client;

(3) The area authority of the county of residence, if appropriate; and

(4) The physician who performed the first examination for commitment, if appropriate, of the escape or breach of condition of the client's release upon the occurrence of either action and of his subsequent return to the facility.

"**§ 122C-206. Transfers of clients between 24-hour facilities.–**(a) Before transferring a voluntary adult client from one 24-hour facility to another, the responsible professional at the original facility shall: (i) get authorization from the receiving facility that the facility will admit the client; (ii) get consent from the client; and (iii) if consent to share information is granted by the client, notify the next of kin of the time and location of the transfer. The preceding requirements of this paragraph may be waived if the client has been admitted under emergency procedures to a State facility not serving the client's region of the State. Following an emergency admission, the client may be transferred to the appropriate State facility without consent according to the rules of the Commission.

(b) Before transferring a respondent held for a district court hearing or a committed respondent from one 24-hour facility to another, the responsible professional at the original facility shall:

(1) Obtain authorization from the receiving facility that the facility will admit the respondent; and

(2) Provide reasonable notice to the respondent, or legally responsible person, of the reason for the transfer and document the notice in the client's record.

No later that 24 hours after the transfer, the responsible professional at the original facility shall notify the petitioner, the clerk of court, and, if consent is granted by the respondent, the next of kin, that the transfer is completed. If the transfer is completed before the judicial commitment hearing, these proceedings shall be initiated by the receiving facility.

(c) Minors and incompetent adults, admitted pursuant to Parts 3 and 4 of this Article, may be transferred from one 24-hour facility to another following the same procedures specified in subsection (b) of this section. In addition, the legally responsible person shall be consulted before the proposed transfer. If the transfer is completed before the judicial determination required in G.S. 122C-223 or G.S. 122C-232, these proceedings shall be initiated by the receiving facility.

(d) Minors and incompetent adults, admitted pursuant to Part 5 of this Article, may be transferred from one 24-hour facility to another provided that prior to transfer the responsible professional at the original facility shall:

(1) Obtain authorization from the receiving facility that the facility will admit the client; and

(2) Provide reasonable notice to the client regarding the reason for transfer and document the notice in the client's record; and

(3) Provide reasonable notice to and consult with the legally responsible person regarding the reason for the transfer and document the notice and

consultation in the client's record.

No later than 24 hours after the transfer, the responsible professional at the original facility shall notify the legally responsible person that the transfer is completed.

(e) The responsible professional may transfer a client from one facility to another for emergency medical treatment, emergency medical evaluation, or emergency surgery without notice to or consent from the client. Within a reasonable period of time the responsible professional shall notify the next of kin or the legally responsible person of the client of the transfer.

(f) When a client is transferred to another facility solely for medical reasons, the client shall be returned to the original facility when the medical care is completed unless the responsible professionals at both facilities concur that discharge of the client who is not subject to G.S. 122C-266(b) is appropriate.

(g) The Commission may adopt rules to implement this section.

"**§ 122C-207. Confidentiality.–**Court records made in all proceedings pursuant to this Article are confidential, and are not open to the general public except as provided for by G.S.122C-54(d).

"**§ 122C-208. Voluntary admission not admissible in involuntary proceeding.–** Except when considering treatment history as it pertains to an involuntary outpatient commitment, the fact that an individual has been voluntarily admitted for treatment shall not be competent evidence in an involuntary commitment proceeding.

"**§ 122C-209. Voluntary admissions acceptance.–**Nothing contained in Parts 2 through 5 of this Article requires a private physician or private facility to accept an individual as a client for examination or treatment. Examination or treatment at a private facility or by a private physician is at the expense of the individual to the extent that charges are not disposed of by contract between the area authority and private facility.

"**§ 122C-210. Guardian to pay expenses out of estate.–**It is the duty of the guardian who has legal custody of the estate of an incompetent individual held pursuant to the provisions of this Article in a facility to supply funds for his support in the facility

during the stay as long as there are sufficient funds for that purpose over and beyond maintaining and supporting those individuals who may be legally dependent on the estate.

"**§ 122C-210.1. Immunity from liability.–**No facility or any of its officials, staff, or employees, or any physician or other individual who is responsible for the examination, management, supervision, treatment, or release of a client and who follows accepted professional judgment, practice, and standards is civilly liable, personally or otherwise, for actions arising from these responsibilities or for actions of the client. This immunity is in addition to any other legal immunity from liability to which these facilities or individuals may be entitled.

"Part 2. Voluntary Admissions and Discharges, Competent Adults, Facilities for the Mentally Ill and Substance Abusers.

"**§ 122C-211. Admissions.–**(a) Except as provided in subsections (b) through (e) of this section, any individual in need of treatment for mental illness or substance abuse may seek voluntary admission at any facility for the mentally ill or substance abusers by presenting himself for evaluation to the facility. No physician's statement is necessary, but a written application for evaluation or admission, signed by the individual seeking admission, is required. The application form shall be available at all times at all facilities. However, no one shall be denied admission because application forms are not available. An evaluation shall determine whether the individual is in need of care, treatment, habilitation or rehabilitation for mental illness or substance abuse or further evaluation by the facility. Information provided by family members regarding the individual's need for treatment shall be reviewed in the evaluation. An individual may not be accepted as a client if the facility determines that the individual does not need or cannot benefit from the care, treatment, habilitation, or rehabilitation available and that the individual is not in need of further evaluation by the facility. The facility shall give to an individual who is denied admission a referral to another facility or facilities that may be able to provide the treatment needed by the client.

(b) In 24-hour facilities the application shall acknowledge that the applicant may be held by the facility for a period of 72 hours after any written request for release that he may make, and shall acknowledge that the 24-hour facility may have the legal right to petition for involuntary commitment of the applicant during that period. At the time of application, the facility shall tell the applicant about procedures for discharge.

(c) Any individual who voluntarily seeks admission to a 24- hour facility in which medical care is an integral component of the treatment shall be examined and evaluated by a physician of the facility within 24 hours of admission. The evaluation shall determine whether the individual is in need of treatment for mental illness or substance abuse or further evaluation by the facility. If the evaluating physician determines that the individual will not benefit from the treatment available, the individual shall not be accepted as a client.

(d) Any individual who voluntarily seeks admission to any 24- hour facility, other than one in which medical care is an integral component of the treatment, shall have a medical examination within 30 days before or after admission if it is reasonably

expected that he will receive treatment for more than 30 days. When applicable, this examination may be included in an examination conducted to meet the requirements of G.S. 122C-223 or G.S. 122C-232.

(e) When an individual from a single portal area seeks admission to an area or State 24-hour facility, the admission shall follow the procedures as prescribed in the area plan. When an individual from a single portal area presents himself for admission to the facility directly and is in need of an emergency admission, he may be accepted for admission. The facility shall notify the area authority within 24 hours of the admission. Further planning of treatment for the client is the joint responsibility of the area authority and the facility as prescribed in the area plan.

"**§ 122C-212. Discharges.–**(a) Except as provided in subsections (b) and (c) of this section, an individual who has been voluntarily admitted to a facility shall be discharged upon his own request. A request for discharge from a 24-hour facility shall be in writing.

(b) An individual who has been voluntarily admitted to a 24- hour facility may be held for 72 hours after his written application for discharge is submitted.

(c) When an individual from a single portal area who has been voluntarily admitted to an area or State 24-hour facility is discharged, the discharge shall follow the procedures as prescribed in the area plan.

"Part 3. Voluntary Admissions and Discharges, Minors, Facilities for the Mentally Ill and Substance Abusers.

"**§ 122C-221. Admissions.–**Except as otherwise provided in this Part, a minor may be admitted to a facility if the minor is mentally ill or a substance abuser and in need of treatment. The provisions of G.S. 122C-211 shall apply to admissions of minors under this Part. Except as provided in G.S. 90-21.5, in applying for admission to a facility, in consenting to medical treatment when consent is required, and in any other legal procedure under this Article, the legally responsible person shall act for a minor.

"**§ 122C-222. Emergency admission to a 24-hour facility.–**(a) In an emergency situation, a minor who is mentally ill or a substance abuser and in need of treatment may be admitted to a 24-hour facility upon his own written application, and the application shall serve as the initiating document for the hearing conducted in accordance with G.S. 122C-223. Within 24 hours of admission, the facility shall notify the legally responsible person of the admission unless notification is impossible due to inability to identify the legally responsible person or to inability to locate or contact him after all reasonable means to establish contact have been attempted.

(b) If after 30 days no legally responsible person can be located, the responsible professional shall initiate proceedings for juvenile protective services as described in Article 44 of Chapter 7A of the General Statutes in either the minor's county of residence or in the county in which the facility is located.

"**§ 122C-223. Judicial determination.–**(a) When a minor is admitted to a 24-hour facility where the minor will be subjected to the same restrictions on his freedom of movement present in the State facilities for the mentally ill, or to similar restrictions, a hearing shall be held in the district court in the county in which the 24-hour facility is

located within 10 days of the day that the minor is admitted to the facility. A continuance of not more that five days may be granted upon motion of:

(1) the court;
(2) respondent's counsel; or
(3) the responsible professional.

The Commission shall adopt rules governing procedures for admission to other 24-hour facilities not falling within the category of facilities where freedom of movement is restricted. These rules shall be designed to ensure that no minor is improperly admitted to or remains in a 24-hour facility.

(b) In any case requiring the hearing described in subsection (a) of this section, no petition is necessary. The written application for voluntary admission shall serve as the initiating document for the hearing. The court shall determine whether the minor is mentally ill or a substance abuser and is in need of further treatment at the facility. Further treatment at the facility should be undertaken only when lesser measures will be insufficient. If the court finds by clear, cogent, and convincing evidence that these requirements have been met, the court shall concur with the voluntary admission of the minor. If the court finds that these requirements have not been met, it shall order that the minor be released. A finding of dangerousness to himself or others is not necessary to support the determination that further treatment should be undertaken.

(c) When it appears that an extended period of diagnostic evaluation is necessary before a recommendation can be made to the court, the responsible professional may request a continued stay in the facility not to exceed 30 days for diagnosis and evaluation. The following procedures apply:

(1) At least 48 hours in advance of the regularly calendared hearing provided in subsection (a) of this section, the responsible professional shall give written notice to the clerk of superior court, the minor, the legally responsible person, and the attorneys for all parties that diagnosis and evaluation of the minor cannot be completed before the calendared hearing and that he will request that the court authorize a period of continued stay in the facility not to exceed 30 days for the purpose of diagnosing and evaluating the minor.
(2) The court shall determine whether there exist reasonable grounds to believe:
    a. That the minor is probably mentally ill or a substance abuser;
    b. That the minor may, upon diagnosis and evaluation, be found to meet the criteria for admission as set out in subsection (b) of this section; and
    c. That the additional time is required to complete the diagnosis and evaluation.
(3) If the court finds that the criteria set out in subdivision (2) of this subsection have been met, it shall authorize a period of continued stay in the facility for diagnosis and evaluation, not to exceed 30 days, and establish a new date for the hearing provided in subsection (a) of this section to occur by the end of the specified period. During this period,

medical, psychiatric, psychological, educational, and social evaluation shall be undertaken and reasonable and appropriate medication and treatment that is consistent with accepted medical standards may be administered.

(4) If the court does not make findings of fact as set out in subdivision (2) of this subsection, the minor shall be ordered released.

(d) Unless otherwise provided in this Part, the hearing specified in subsection (a) of this section, including the provisions for representation of indigent minors, all subsequent proceedings, and conditional release are governed by the involuntary commitment procedures of Part 7 of this Article.

(e) In addition to the notice of hearings and rehearings to the minor and his counsel required under Part 7 of this Article, notice shall be given by the clerk to the legally responsible person who signed the application for voluntary admission. The legally responsible person who signed the application for voluntary admission, may also file a written waiver of his right to receive notice with the clerk of court.

"**§ 122C-224. Discharges.–**(a) Except as provided in subsection (b) of this section, a minor shall be discharged upon his legally responsible person's request as provided in G.S. 122C-212. However, a minor admitted upon his own application shall be discharged upon his own application as provided in G.S. 122C-212.

(b) After the court has concurred in the admission of a minor to a 24-hour facility as provided in G.S. 122C-223, only the facility or the court may release the minor when either determines that the minor is no longer in need of treatment at the facility. If the legally responsible person believes that release is in the best interest of the minor, and the facility refuses release, the legally responsible person may apply to the court for a hearing for discharge.

"Part 4. Voluntary Admissions and Discharges, Incompetent Adults, Facilities for the

Mentally Ill and Substance Abusers.

"**§ 122C-231. Admissions.–**Except as otherwise provided in this Part an incompetent adult may be admitted to a facility when the individual is mentally ill or a substance abuser and in need of treatment. The provisions of G.S. 122C-211 shall apply to admissions of an incompetent adult under this Part except that the legally responsible person shall act for the individual, in applying for admission to a facility, in consenting to medical treatment when consent is required, in giving or receiving any legal notice, and in any other legal procedure under this Article.

"**§ 122C-232. Judical determination.–**(a) When an incompetent adult is admitted to a 24-hour facility where the incompetent adult will be subjected to the same restrictions on his freedom of movement present in the State facilities for the mentally ill, or to similar restrictions, a hearing shall be held in the district court in the county in which the 24-hour facility is located within 10 days of the day that the incompetent adult is admitted to the facility. A continuance of not more than five days may be granted upon motion of:

(1) the court;

(2) respondent's counsel; or

(3) the responsible professional.

The Commission shall adopt rules governing procedures for admission to other 24-hour facilities not falling within the category of facilities where freedom of movement is restricted; these rules shall be designed to ensure that no incompetent adult is improperly admitted to or remains in a facility.

(b) In any case requiring the hearing described in subsection (a) of this section, no petition is necessary; the written application for voluntary admission shall serve as the initiating document for the hearing. The court shall determine whether the incompetent adult is mentally ill or a substance abuser and is in need of further treatment at the facility. Further treatment at the facility should be undertaken only when lesser measures will be insufficient. If the court finds by clear, cogent, and convincing evidence that these requirements have been met, the court shall concur with the voluntary admission of the incompetent adult. If the court finds that these requirements have not been met, it shall order that the incompetent adult be released. A finding of dangerousness to self or others is not necessary to support the determination that further treatment should be undertaken.

(c) Unless otherwise provided in this Part, the hearing specified in subsection (a) of this section, including the provisions for representation of indigent incompetent adults, all subsequent proceedings, and conditional release are governed by the involuntary commitment procedures of Part 7 of this Article.

(d) In addition to the notice of hearings and rehearings to the incompetent adult and his counsel required under Part 7 of this Article, notice shall be given by the clerk to the legally responsible person, or his successor. The legally responsible person, or his successor may also file with the clerk of court a written waiver of his right to receive notice.

"**§ 122C-233. Discharges.–**(a) Except as provided in subsection (b) of this section, an incompetent adult shall be discharged upon the request of the legally responsible person as provided in G.S. 122C-212.

(b) After the court has concurred in the admission of an incompetent adult to a 24-hour facility as provided in G.S. 122C- 232, only the facility or the court may release the incompetent adult at any time when either determines that the incompetent adult does not need further treatment at the facility. If the legally responsible person believes that release is in the best interest of the incompetent adult, and the facility refuses release, the legally responsible person may apply to the court for a hearing for discharge.

"Part 5. Voluntary Admissions and Discharges, Minors and Adults, Facilities for Individuals with Mental Retardation.

"**§ 122C-241. Admissions.–**(a) Except as provided in subsection (c) of this section an individual with mental retardation may be admitted to a facility for the mentally retarded in order that he receive care, habilitation, training, or treatment. Application for admission is made as follows:

(i) A minor with mental retardation may be admitted upon application by both the father and the mother if they are living together and, if not, by the parent or parents having custody or by the legally responsible person.

(ii) An adult with mental retardation who has been adjudicated incompetent under Chapters 33 or 35 of the General Statutes may be admitted upon application by his guardian.

(iii) An adult with mental retardation who has not been adjudicated incompetent under Chapters 33 or 35 of the General Statutes may be admitted upon his own application.

(b) Prior to admission to a 24-hour facility, the individual shall be examined and evaluated by a physician, licensed practicing psychologist or psychological associate to determine whether the individual is mentally retarded. In addition, the individual shall be examined and evaluated by a qualified mental retardation professional no sooner than 31 days prior to admission or within 72 hours after admission to determine whether the individual is in need of care, habilitation, training or treatment by the facility. If the evaluating professional determines that the individual will not benefit from an admission, the individual shall not be admitted as a client.

(c) An admission to an area or State 24-hour facility of an individual from a single portal area shall follow the procedures as prescribed in the area plan. When an individual from a single portal area presents himself or is presented for admission to a State facility for the mentally retarded directly and is in need of an emergency admission, he may be accepted for admission. The State facility shall notify the area authority within 24 hours of the admission and further planning of treatment for the individual is the joint responsibility of the area authority and the State facility as prescribed in the area plan.

"**§ 122C-242. Discharges.–**(a) Except as provided in subsections (b) through (d) of this section, discharges from facilities for individuals with mental retardation are made upon request of the individual authorized in G.S. 122C-241(a) to make application for admission or by the director of the facility.

(b) Any adult who has not been declared incompetent and who is admitted to a 24-hour facility shall be discharged upon his own request, unless the director of the facility has reason to believe that the adult is endangering himself by the discharge. In this case the individual may be held for a period not to exceed five days while the director petitions for the adjudication of incompetency of the individual and the appointment of an interim guardian under Chapters 33 or 35 of the General Statutes.

(c) Any individual admitted to a 24-hour facility may be discharged when in the judgment of the director of the facility the individual is no longer in need of care, treatment, habilitation or rehabilitation by the facility or the individual will no longer benefit from the service available. In the case of an area or State facility rules adopted by the Commission or by the Secretary in accordance with G.S. 122C-63 shall be followed.

(d) When the individual to be discharged from an area or State 24-hour facility is a resident of a single portal area, the discharge shall follow the procedures described in the area plan.

"Part 6. Involuntary Commitment – General Provisions.

"**§ 122C-251. Transportation.–**(a) Except as provided in subsections (f) and (g), transportation of a respondent within a county under the involuntary commitment proceedings of this Article, including admission and discharge, shall be provided by the city or county. The city has the duty to provide transportation of a respondent who is a resident of the city or who is taken into custody in the city limits. The county has the duty to provide transportation for a respondent who resides in the county outside city limits or who is taken into custody outside of city limits. However, cities and counties may contract with each other to provide transportation.

(b) Except as provided in subsections (f) and (g) or in G. S. 122C-408(b), transportation between counties under the involuntary commitment proceedings of this Article for admission to a 24-hour facility shall be provided by the county where the respondent is taken into custody. Transportation between counties under the involuntary commitment proceedings of this Article for discharge of a respondent from a 24-hour facility shall be provided by the county of residence of the respondent. However, a respondent being discharged from a facility may use his own transportation at his own expense.

(c) Transportation of a respondent may be by city- or county- owned vehicles or by private vehicle by contract with the city or county. To the extent feasible, law enforcement officers transporting respondents shall dress in plain clothes and shall travel in unmarked vehicles.

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

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

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

(g) The governing body of a city or county may adopt a plan for transportation of respondents in involuntary commitment proceedings in this Article. Law enforcement personnel, volunteers, or other public or private agency personnel may be designated to provide all or parts of the transportation required by involuntary commitment proceedings. Persons so designated shall be trained and the plan shall assure adequate safety and protections for both the public and the respondent. Law enforcement, other affected agencies, and the area authority shall participate in the planning. If any person

other than a law enforcement agency is designated by a city or county, the person so designated shall provide the transportation and follow the procedures in this Article. References in this Article to a law enforcement officer apply to this person.

(h) The cost and expenses of transporting a respondent to or from a 24-hour facility is the responsibility of the county of residence of the respondent. The State (when providing transportation under G.S. 122C-408(b)), a city, or a county is entitled to recover the reasonable cost of transportation from either (i) the respondent or some other individual liable for his support and maintenance, if there is property sufficient to pay the cost; or (ii) the county of residence of an indigent respondent.

"**§ 122C-252. Twenty-four hour facilities for custody and treatment of involuntary clients.–**State facilities, 24-hour facilities licensed under this Chapter or hospitals licensed under Chapter 131E may be designated by the Secretary as facilities for the custody and treatment of involuntary clients. Designation of these facilities shall be made in accordance with rules of the Secretary that assure the protection of the client and the general public. Facilities so designated may detain a client under the procedures of Parts 7 and 8 of this Article both before a district court hearing and after commitment of the respondent.

"**§ 122C-253. Fees under commitment order.–**Nothing contained in Parts 6, 7, or 8 of this Article requires a private physician or private facility to accept a respondent as a client either before or after commitment. Treatment at a private facility or by a private physician is at the expense of the respondent to the extent that the charges are not disposed of by contract between the area authority and the private facility. An area authority and its contract agencies shall set and recover fees for inpatient or outpatient treatment services provided under a commitment order in accordance with G.S. 122C-146.

"**§ 122C-254. Housing responsibility for certain clients in or escapees from involuntary commitment.–**(a) Any individual who has been involuntarily committed under the provisions of this Article to a 24-hour facility:

(1) Who escapes from or is absent without authorization from the facility before being discharged; and

(2) Who is charged with a criminal offense committed after the escape or during the unauthorized absence; and

(3) Whose involuntary commitment is determined to be still valid by the judge or judicial officer who would make the pretrial release determination regarding the criminal offense under the provisions of G.S. 15A-533 and G.S. 15A-534; or

(4) Who is charged with committing a crime while still residing in the facility and whose commitment is still valid as prescribed by subdivision (3) of this section; shall be denied pretrial release pursuant to G.S. 15A-533 and G.S. 15A-534. In lieu of pretrial release, and pending the additional proceedings on the criminal offense, the individual shall be returned to the 24-hour facility in which he was residing at the time of the alleged crime or from which he escaped or absented himself for continuation of his commitment.

(b) Absent findings of lack of mental responsibility for his criminal offense or lack of competency to stand trial for the criminal offense, the involuntary commitment of an individual as described in subsection (a) of this section shall not be utilized in lieu of nor shall it constitute a bar to proceeding to trial for the criminal offense. At any time that the district court or the responsible professional of the 24-hour facility finds that the individual should be unconditionally discharged, committed for outpatient treatment, or conditionally released, the facility shall notify the clerk of superior court in the county in which the criminal charge is pending before making the change in status. At this time, a pretrial release determination pursuant to the provisions of G.S. 15A-533 and G.S. 15A-534 shall be made. In this event, arrangements for returning the individual for the pretrial release determination shall be the responsibility of the clerk of superior court.

(c) An individual who has been processed in accordance with subsections (a) and (b) of this section may not later be returned to a 24-hour facility before trial except pursuant to involuntary commitment proceedings by the district court in accordance with Parts 7 and 8 of this Article or after proceedings in accordance with the provisions of G.S. 15A-1002 or G.S. 15A-1321.

(d) Other involuntarily committed respondents who escape, but do not meet the additional criteria specified in subsection (a) of this section, are handled in accordance with the provisions of G.S. 122C-205.

"Part 7. Involuntary Commitment of the Mentally Ill and the Mentally Retarded with Behavior Disorders,

Facilities for the Mentally Ill.

"**§ 122C-261. Affidavit and petition before clerk or magistrate; custody order.–**(a) Anyone who has knowledge of an individual who is: (i) mentally ill and either dangerous to himself or others or in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness, or (ii) mentally retarded and, because of an accompanying behavior disorder, is dangerous to others, may appear before a clerk or assistant or deputy clerk of superior court or a magistrate and execute an affidavit to this effect, and petition the clerk or magistrate for issuance of an order to take the respondent into custody for examination by a physician. The affidavit shall include the facts on which the affiant's opinion is based. Jurisdiction under this subsection is in the clerk or magistrate in the county where the respondent resides or is found.

(b) If the clerk or magistrate finds reasonable grounds to believe that the facts alleged in the affidavit are true and that the respondent is probably (i) mentally ill and either dangerous to himself or others or in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness, or (ii) mentally retarded and, because of an accompanying behavior disorder, is dangerous to others, he shall issue an order to a law enforcement officer or any other person authorized under G.S. 122C-251 to take the respondent into custody for examination by a physician.

(c) If the clerk or magistrate issues a custody order, he shall also make inquiry in any reliable way as to whether the respondent is indigent within the meaning of G.S. 7A-450. A magistrate shall report the result of this inquiry to the clerk.

(d) If the affiant is a physician, he may execute the affidavit before any official authorized to administer oaths. He is not required to appear before the clerk or magistrate for this purpose. His examination shall comply with the requirements of the initial examination as provided in G.S. 122C-263(c). If the physician petitioner's recommendation is for inpatient commitment and the clerk or magistrate finds probable cause to believe that the respondent meets the criteria for inpatient commitment, he shall issue an order for transportation to or custody at a 24- hour facility described in G.S. 122C-252. If a physician executes an affidavit for inpatient commitment of a respondent, a second physician shall be required to perform the examination required by G.S. 122C-266.

(e) Upon receipt of the custody order of the clerk or magistrate or a custody order issued by the court pursuant to G.S. 15A-1003 or G.S. 15A-1321, a law enforcement officer or other person designated in the order shall take the respondent into custody within 24 hours after the order is signed, and proceed according to G.S. 122C-263.

(f) When a petition is filed for an individual who is a resident of a single portal area, the procedures for examination by a physician as set forth in G.S. 122C-263 shall be carried out in accordance with the area plan. When an individual from a single portal area is presented for commitment at a 24-hour area or State facility directly, he may be accepted for admission in accordance with G.S. 122C-266. The facility shall notify the area authority within 24 hours of the admission and further planning of treatment for the client is the joint responsibility of the area authority and the facility as prescribed in the area plan.

"**§ 122C-262. Special emergency procedure for violent individuals.–**When an individual subject to commitment under the provisions of this Part is also violent and requires restraint and when delay in taking him to a physician for examination would likely endanger life or property, a law enforcement officer may take the individual into custody and take him immediately before a magistrate or clerk. The law enforcement officer shall execute the affidavit required by G.S. 122C-261 and in addition shall swear that the respondent is violent and requires restraint and that delay in taking the respondent to a physician for an examination would endanger life or property.

If the clerk or magistrate finds by clear, cogent, and convincing evidence that the facts stated in the affidavit are true, that the respondent is in fact violent and requires restraint, and that delay in taking the respondent to a physician for an examination would endanger life or property, he shall order the law enforcement officer to take the respondent directly to a 24-hour facility described in G.S. 122C-252.

Respondents received at a 24-hour facility under the provisions of this section shall be examined and processed thereafter in the same way as all other respondents under this Part.

"**§ 122C-263. Duties of law enforcement officer; first examination by physician.–**(a)

Without unnecessary delay after assuming custody, the law enforcement officer or the individual designated by the clerk or magistrate under G.S. 122C-251(g) to

provide transportation shall take the respondent to an area facility for examination by a physician; if a physician is not available in the area facility, he shall take the respondent to any physician locally available. If a physician is not immediately available, the respondent may be temporarily detained in an area facility, if one is available; if an area facility is not available, he may be detained under appropriate supervision in his home, in a private hospital or a clinic, in a general hospital, or in a State facility for the mentally ill, but not in a jail or other penal facility.

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

(1) The affiant who obtained the custody order is a physician who recommends inpatient commitment;

(2) The custody order states that the respondent was charged with a violent crime, including a crime involving assault with a deadly weapon, and he was found not guilty by reason of insanity or incapable of proceeding; or

(3) The respondent is in custody under the special emergency procedure described in G.S. 122C-262.

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

(c) The physician described in subsection (a) of this section shall examine the respondent as soon as possible, and in any event within 24 hours, after the respondent is presented for examination. The examination shall include but is not limited to an assessment of the respondent's:

(1) Current and previous mental illness or mental retardation including, if available, previous treatment history;

(2) Dangerousness to himself or others as defined in G.S. 122C-3(11);

(3) Ability to survive safely without inpatient commitment, including the availability of supervision from family, friends or others; and (4) Capacity to make an informed decision concerning treatment.

(d) After the conclusion of the examination the physician shall make the following determinations:

(1) If the physician finds that:

a. The respondent is mentally ill;

b. The respondent is capable of surviving safely in the community with available supervision from family, friends, or others;

c. Based on the respondent's treatment history, the respondent is in need of treatment in order to prevent further disability or deterioration which would predictably result in dangerousness as defined by G.S. 122C- 3(11); and

d. His current mental status or the nature of his illness limits or negates his ability to make an informed decision to seek voluntarily or comply with recommended treatment;

The physician shall so show on the physician's examination report and shall recommend outpatient commitment. In addition the examining physician shall show the

name, address, and telephone number of the proposed outpatient treatment physician or center. The person designated in the order to provide transportation shall return the respondent to his regular residence or to the home of a consenting individual, and he shall be released from custody.

(2) If the physician finds that the respondent is mentally ill and is dangerous to himself or others, or is mentally retarded, and because of an accompanying behavior disorder, is dangerous to others, he shall recommend inpatient commitment, and he shall so show on the physician's examination report. The law enforcement officer or other designated person shall take the respondent to a 24-hour facility described in G.S. 122C-252 pending a district court hearing. If there is no area 24- hour facility and if the respondent is indigent and unable to pay for his care at a private 24-hour facility, the law enforcement officer or other designated person shall take the respondent to a State facility for the mentally ill designated by the Commission for custody, observation, and treatment and immediately notify the clerk of superior court of his actions.

(3) If the physician finds that neither condition described in subdivisions (1) or (2) of this subsection exists, the respondent shall be released and the proceedings terminated.

(e) The findings of the physician and the facts on which they are based shall be in writing in all cases. The physician shall send a copy of the findings to the clerk of superior court by the most reliable and expeditious means. If it cannot be reasonably anticipated that the clerk will receive the copy within 48 hours of the time that it was signed, the physician shall also communicate his findings to the clerk by telephone.

(f) When outpatient commitment is recommended, the examining physician, if different from the proposed outpatient treatment physician or center, shall give the respondent a written notice listing the name, address, and telephone number of the proposed outpatient treatment physician or center and directing the respondent to appear at the address at a specified date and time. The examining physician before the appointment shall notify by telephone the designated outpatient treatment physician or center and shall send a copy of the notice and his examination report to the physician or center.

"**§ 122C-264. Duties of clerk of superior court.–**(a) Upon receipt of a physician's finding that the respondent meets the criteria of G.S. 122C-263(d)(1) and that outpatient commitment is recommended, the clerk of superior court of the county where the petition was initiated, upon direction of a district court judge, shall calendar the matter for hearing and shall notify the respondent, the proposed outpatient treatment physician or center, and the petitioner of the time and place of the hearing. The petitioner may file a written waiver of his right to notice under this subsection with the clerk of court.

(b) Upon receipt of a physician's finding that a respondent meets the criteria of G.S. 122C-263(d)(2) and that inpatient commitment is recommended, the clerk of superior court of the county where the 24-hour facility is located shall, after determination required by G.S. 122C-261(c) and upon direction of a district court judge,

assign counsel if necessary, calendar the matter for hearing, and notify the respondent, his counsel, and the petitioner of the time and place of the hearing. The petitioner may file a written waiver of his right to notice under this subsection with the clerk of court.

(c) Notice to the respondent, required by subsections (a) and (b) of this section, shall be given as provided in G.S. 1A-1, Rule 4(j) at least 72 hours before the hearing. Notice to other individuals shall be sent at least 72 hours before the hearing by first-class mail postage prepaid to the individual's last known address.

(d) In cases described in G.S. 122C-266(b) in addition to notice required in subsections (a) and (b) of this section, the clerk of superior court shall notify the chief district judge and the district attorney in the county in which the defendant was found not guilty by reason of insanity or incapable of proceeding. The notice shall be given in the same way as the notice required by subsection (c) of this section. The judge or the district attorney may file a written waiver of his right to notice under this subsection with the clerk of court.

(e) The clerk of superior court of the county where outpatient commitment is to be supervised shall keep a separate list regarding outpatient commitment and shall prepare quarterly reports listing all active cases, the assigned supervisor, and the disposition of all hearings, supplemental hearings, and rehearings.

(f) The clerk of superior court of the county where inpatient commitment hearings and rehearings are held shall provide all notices, send all records and maintain a record of all proceedings as required by this Part; provided that if the respondent has been committed to a 24-hour facility in a county other than his county of residence and the district court hearing is held in the county of the facility, the clerk of superior court in the county of the facility shall forward the record of the proceedings to the clerk of superior court in the county of respondent's residence, where they shall be maintained by receiving clerk.

"**§ 122C-265. Outpatient commitment; examination and treatment pending hearing.–**(a) If a respondent, who has been recommended for outpatient commitment by an examining physician different from the proposed outpatient treatment physician or center, fails to appear for examination by the proposed outpatient treatment physician or center at the designated time, the physician or center shall notify the clerk of superior court who shall issue an order to a law enforcement officer or other person authorized under G.S. 122C-251 to take the respondent into custody and take him immediately to the outpatient treatment physician or center for evaluation. The law enforcement officer may wait during the examination and return the respondent to his home after the examination.

(b) The examining physician or the proposed outpatient treatment physician or center may prescribe to the respondent reasonable and appropriate medication and treatment that are consistent with accepted medical standards pending the district court hearing.

(c) In no event may a respondent released on a recommendation that he meets the outpatient commitment criteria be physically forced to take medication or forceably detained for treatment pending a district court hearing.

(d) If at any time pending the district court hearing the outpatient treatment physician or center determines that the respondent does not meet the criteria of G.S. 122C-263(d) (1), he shall release the respondent and notify the clerk of court and the proceedings shall be terminated.

(e) If a respondent becomes dangerous to himself or others pending a district court hearing on outpatient commitment, new proceedings for involuntary inpatient commitment may be initiated.

(f) If an inpatient commitment proceeding is initiated pending the hearing for outpatient commitment and the respondent is admitted to a 24-hour facility to be held for an inpatient commitment hearing, notice shall be sent by the clerk of court in the county where the respondent is being held to the clerk of court of the county where the outpatient commitment was initiated and the outpatient commitment proceeding shall be terminated.

"**§ 122C-266. Inpatient commitment; second examination and treatment pending hearing.–**(a) Except as provided in subsections (b) and (e), within 24 hours of arrival at a 24-hour facility described in G.S. 122C-252, the respondent shall be examined by a physician. The examination shall include but is not limited to the assessment specified in G.S. 122C-263(c).

(1) If the physician finds that the respondent is mentally ill and is dangerous to himself or others or is mentally retarded and, because of an accompanying behavior disorder, is dangerous to others, he shall hold the respondent at the facility pending the district court hearing.

(2) If the physician finds that the respondent meets the criteria for outpatient commitment under G.S. 122C-263(d)(1), he shall show his findings on the physician's examination report, release the respondent pending the district court hearing, and notify the clerk of superior court of the county where the petition was initiated of his findings. In addition, the examining physician shall show on the examination report the name, address, and telephone number of the proposed outpatient treatment physician or center. He shall give the respondent a written notice listing the name, address, and telephone number of the proposed outpatient treatment physician or center and directing the respondent to appear at that address at a specified date and time. The examining physician before the appointment shall notify by telephone and shall send a copy of the notice and his examination report to the proposed outpatient treatment physician or center.

(3) If the physician finds that the respondent does not meet the criteria for commitment under either G.S. 122C-263(d)(1) or G.S. 122C-263(d)(2), he shall release the respondent and the proceedings shall be terminated.

(4) If the respondent is released under subdivisions (2) or (3) of this subsection, the law enforcement officer or other person designated to provide transportation shall return the respondent to the originating county.

(b) If the custody order states that the respondent was charged with a violent crime, including a crime involving assault with a deadly weapon, and that he was found not guilty by reason of insanity or incapable of proceeding, the physician shall examine him as set forth in subsection (a) of this section. However, the physician may not release him from the facility until ordered to do so following the district court hearing.

(c) The findings of the physician and the facts on which they are based shall be in writing, in all cases. A copy of the findings shall be sent to the clerk of superior court by reliable and expeditious means.

(d) Pending the district court hearing, the physician attending the respondent may administer to the respondent reasonable and appropriate medication and treatment that is consistent with accepted medical standards. Except as provided in subsection (b) of this section, if at any time pending the district court hearing, the attending physician determines that the respondent no longer meets the criteria of either G.S. 122C-263(d)(1) or (d)(2), he shall release the respondent and notify the clerk of court and the proceedings shall be terminated.

(e) If the 24-hour facility described in G.S. 122C-252 is the facility in which the first examination by a physician occurred and is the same facility in which the respondent is held, the second examination must occur not later than the following regular working day.

"**§ 122C-267. Outpatient commitment; district court hearing.–** (a) A hearing shall be held in district court within 10 days of the day the respondent is taken into custody pursuant to G.S. 122C-261(e). Upon its own motion or upon motion of the proposed outpatient treatment physician or the respondent, the court may grant a continuance of not more than five days.

(b) The respondent shall be present at the hearing. A subpoena may be issued to compel the respondent's presence at a hearing. The petitioner and the proposed outpatient treatment physician or his designee may be present and may provide testimony.

(c) Certified copies of reports and findings of physicians and medical records of previous and current treatment are admissible in evidence.

(d) At the hearing to determine the necessity and appropriateness of outpatient commitment, the respondent need not, but may, be represented by counsel. However, if the court determines that the legal or factual issues raised are of such complexity that the assistance of counsel is necessary for an adequate presentation of the merits or that the respondent is unable to speak for himself, the court may continue the case for not more than five days and order the appointment of counsel for an indigent respondent.

(e) Hearings may be held at the area facility in which the respondent is being treated, if it is located within the judge's judicial district, or in the judge's chambers. A hearing may not be held in a regular courtroom, over objection of the respondent, if in the discretion of a judge a more suitable place is available.

(f) The hearing shall be closed to the public unless the respondent requests otherwise.

(g) A copy of all documents admitted into evidence and a transcript of the proceedings shall be furnished to the respondent on request by the clerk upon the

direction of a district court judge. If the client is indigent, the copies shall be provided at State expense.

(h) To support an outpatient commitment order, the court is required to find by clear, cogent, and convincing evidence that the respondent meets the criteria specified in G.S. 122C- 262(d)(l). The court shall record the facts which support its findings and shall show on the order the center or physician who is responsible for the management and supervision of the respondent's outpatient commitment.

"**§ 122C-268. Inpatient commitment; district court hearing.–** (a) A hearing shall be held in district court within 10 days of the day the respondent is taken into custody pursuant to G.S. 122C-261(e). A continuance of not more than five days may be granted upon motion of:

(1) the court;

(2) respondent's counsel; or

(3) the State, sufficiently in advance to avoid movement of the respondent.

(b) The attorney, who is a member of the staff of the Attorney General assigned to one of the State's facilities for the mentally ill or the psychiatric service of North Carolina Memorial Hospital, shall represent the State's interest at commitment hearings, rehearings, and supplemental hearings held at the facility to which he is assigned under this Part.

(c) If the respondent's custody order indicates that he was charged with a violent crime, including a crime involving an assault with a deadly weapon, and that he was found not guilty by reason of insanity or incapable of proceeding, the clerk shall give notice of the time and place of the hearing as provided in G.S. 122C-264(d). The district attorney in the county in which the respondent was found not guilty by reason of insanity or incapable of proceeding may represent the State's interest at the hearing.

(d) The respondent shall be represented by counsel of his choice; or if he is indigent within the meaning of G.S. 7A-450 or refuses to retain counsel if financially able to do so, he shall be represented by counsel appointed by the court.

(e) With the consent of the court, counsel may in writing waive the presence of the respondent.

(f) Certified copies of reports and findings of physicians and previous and current medical records are admissible in evidence, but the respondent's right to confront and cross-examine witnesses may not be denied.

(g) Hearings may be held in an appropriate room not used for treatment of clients at the facility in which the respondent is being treated if it is located within the judge's judicial district, or in the judge's chambers. A hearing may not be held in a regular courtroom, over objection of the respondent, if in the discretion of a judge a more suitable place is available.

(h) The hearing shall be closed to the public unless the respondent requests otherwise.

(i) A copy of all documents admitted into evidence and a transcript of the proceedings shall be furnished to the respondent on request by the clerk upon the direction of a district court judge. If the respondent is indigent, the copies shall be provided at State expense.

(j) To support an inpatient commitment order, the court shall find by clear, cogent, and convincing evidence that the respondent is mentally ill and dangerous to himself or others or is mentally retarded and, because of an accompanying behavior disorder, is dangerous to others. The court shall record the facts that support its findings.

"**§ 122C-269. Venue of district court hearing when respondent held at a 24-hour facility pending hearing.–**(a) In all cases where the respondent is held at a 24-hour facility pending the district court hearing as provided in G.S. 122C-268, unless the respondent through counsel objects to the venue, the hearing shall be held in the county in which the facility is located. Upon objection to venue, the hearing shall be held in the county where the petition was initiated.

(b) An official of the facility shall immediately notify the clerk of superior court of the county in which the facility is located of a determination to hold the respondent pending hearing. That clerk shall request transmittal of all documents pertinent to the proceedings from the clerk of superior court where the proceedings were initiated. The requesting clerk shall assume all duties set forth in G.S. 122C-264. The requesting clerk shall appoint as counsel for indigent respondents the counsel provided for in G.S. 122C-268(d).

(c) Upon motion of any interested person, the venue of an initial hearing described in G.S. 122C-268(c) or a rehearing required by G.S. 122C-276(b) or G.S. 122C-277(b) shall be moved to the county in which the respondent was found not guilty by reason of insanity or incapable of proceeding when the convenience of witnesses and the ends of justice would be promoted by the change.

"**§ 122C-270. Attorneys to represent the respondent and the State.–**(a) The senior regular resident superior court judge of a judicial district in which a State facility for the mentally ill is located shall appoint an attorney licensed to practice in North Carolina as special counsel for indigent respondents who are mentally ill or mentally retarded with an accompanying behavior disorder. This special counsel shall serve at the pleasure of the appointing judge, may not privately practice law, and shall receive annual compensation within the salary range for assistant district attorneys as fixed by the Administrative Officer of the Courts. The special counsel shall represent all indigent respondents at all hearings, rehearings, and supplemental hearings held at the State facility and on appeals held under this Article. Special counsel shall determine indigency in accordance with G.S. 7A-450(a). Indigency is subject to redetermination by the presiding judge.

(b) The State facility shall provide suitable office space for the counsel to meet privately with respondents. The Administrative Office of the Courts shall provide secretarial and clerical service and necessary equipment and supplies for the office.

(c) In the event of a vacancy in the office of special counsel, counsel's incapacity, or a conflict of interest, counsel for indigents at hearings or rehearings may be assigned by a district judge of the district. No mileage or compensation for travel time is paid to a counsel appointed pursuant to this subsection. Counsel may also be so assigned when, in the opinion of the Administrative Officer of the Courts, the volume of cases warrants.

(d) At hearings held in counties other than those designated in subsection (a) of this section, a district court judge shall appoint counsel for indigent respondents from members of the bar of the county in accordance with G.S. 122C-268(d).

(e) Counsel assigned to represent an indigent respondent at the initial district court hearing is also responsible for perfecting and concluding an appeal, if there is one. Upon completion of an appeal, or upon transfer of the respondent to a State facility for the mentally ill, if there is no appeal, assigned counsel is discharged. If the respondent is committed to a non-State 24-hour facility, assigned counsel remains responsible for his representation until discharged by order of district court, until the respondent is unconditionally discharged from the facility, or until the respondent voluntarily admits himself to the facility.

(f) The Attorney General may employ four attorneys, one to be assigned by him full-time to each of the State facilities for the mentally ill, to represent the State's interest at commitment hearings, rehearings and supplemental hearings held under this Article at the State facilities and to provide liaison and consultation services concerning these matters. These attorneys are subject to Chapter 126 of the General Statutes and shall also perform additional duties as may be assigned by the Attorney General. The attorney employed by the Attorney General in accordance with G.S. 114-4.2B shall represent the State's interest at commitment hearings, rehearings and supplemental hearings held at North Carolina Memorial Hospital under this Article.

"**§ 122C-271. Disposition.–**(a) If an examining physician has recommended outpatient commitment and the respondent has been released pending the district court hearing, the court may make one of the following dispositions:

(1) If the court finds by clear, cogent, and convincing evidence that the respondent is mentally ill; that he is capable of surviving safely in the community with available supervision from family, friends, or others; that based on respondent's treatment in order to prevent further disability or

deterioration that would predictably result in dangerousness as defined in G.S. 122C-3(11); and that the respondent's current mental status or the nature of his illness limits or negates his ability to make an informed decision to seek voluntarily or comply with recommended treatment, it may order outpatient commitment for a period not in excess of 90 days.

(2) If the court does not find that the respondent meets the criteria of commitment set out in subdivision (1) of this subsection, the respondent shall be discharged and the facility at which he was last a client so notified.

(b) If the respondent has been held in a 24-hour facility pending the district court hearing, the court may make one of the following dispositions:

(1) If the court finds by clear, cogent, and convincing evidence that the respondent is mentally ill; that he is capable of surviving safely in the community with available supervision from family, friends, or others;

that based on respondent's treatment history, the respondent is in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness as defined by G.S. 122C-3(11); and that the respondent's current mental status or the nature of his illness limits or negates his ability to make an informed decision voluntarily to seek or comply with recommended treatment, it may order outpatient commitment for a period not in excess of 90 days. If the commitment proceedings were intitated as the result of the respondent's being charged with a violent crime, including a crime involving an assault with a deadly weapon, and the respondent was found not guilty by reason of insanity or incapable of proceeding, the commitment order shall so show.

(2) If the court finds by clear, cogent, and convincing evidence that the respondent is mentally ill and is dangerous to himself or others or is mentally retarded and, because of an accompanying behavior disorder, is dangerous to others, it may order inpatient commitment at a 24-hour facility described in G.S. 122C-252, or a combination of inpatient and outpatient commitment at both a 24- hour facility and an outpatient treatment physician or center, for a period not in excess of 90 days. However, an individual who is mentally retarded and, because of an accompanying behavior disorder, is dangerous to others may not be committed to a State, area or private facility for the mentally retarded. If the commitment proceedings were initiated as the result of the respondent's being charged with a violent crime, including a crime involving an assault with a deadly weapon, and the respondent was found not guilty by reason of insanity or incapable of proceeding, the commitment order shall so show. If the court orders inpatient commitment for a respondent who is under an outpatient commitment order, the outpatient commitment is terminated; and the clerk of the superior court of the county where the district court hearing is held shall send a notice of the inpatient commitment to the clerk of superior court where the outpatient commitment was being supervised.

(3) If the court does not find that the respondent meets either of the commitment criteria set out in subdivisions (1) and (2) of this subsection, the respondent shall be discharged, and the facility in which he was last a client so notified.

(4) Before ordering any outpatient commitment, the court shall make findings of fact as to the availability of outpatient treatment. The court shall also show on the order the outpatient treatment physician or center who is to be responsible for the management and supervision of the respondent's outpatient commitment. When an outpatient commitment order is issued for a respondent held in a 24-hour facility, the court may order the respondent held at the facility for no more than 72 hours in order for the facility to notify the designated outpatient treatment physician or center of the treatment needs of the respondent.

The clerk of court in the county where the facility is located shall send a copy of the outpatient commitment order to the designated outpatient treatment physician or center. If the outpatient commitment will be supervised in a county other than the county where the commitment originated, the court shall order venue for further court proceedings to be transferred to the county where the outpatient commitment will be supervised. Upon an order changing venue, the clerk of superior court in the county where the commitment originated shall transfer the file to the clerk of superior court in the county where the outpatient commitment is to be supervised.

"**§ 122C-272. Appeal.–**Judgement of the district court is final. Appeal may be had to the Court of Appeals by the State or by any party on the record as in civil cases. Appeal does not stay the commitment unless so ordered by the Court of Appeals. The Attorney General represents the State's interest on appeal. The district court retains limited jurisdiction for the purpose of hearing all reviews, rehearings, or supplemental hearings allowed or required under this Part.

"**§ 122C-273. Duties for follow-up on commitment order.–**(a) If the commitment order directs outpatient treatment, the outpatient treatment physician may prescribe or administer to the respondent reasonable and appropriate medication and treatment that are consistent with accepted medical standards.

(1) If the respondent fails to comply or clearly refuses to comply with all or part of the prescribed treatment, the physician or his designee shall make all reasonable effort to solicit the respondent's compliance. These efforts shall be documented and reported to the court with a request for a supplemental hearing.

(2) If the respondent fails to comply, but does not clearly refuse to comply, with all or part of the prescribed treatment after reasonable effort to solicit the respondent's compliance, the physician or his designee may request the court to order the respondent taken into custody for the purpose of examination. Upon receipt of this request, the clerk shall issue an order to a law enforcement officer to take the respondent into custody and to take him immediately to the designated outpatient treatment physician or center for examination. The law enforcement officer shall turn the respondent over to the custody of the physician or center who shall conduct the examination and then release the respondent. The law enforcement officer may wait during the examination and return the respondent to his home after the examination. An examination conducted under this subsection in which a physician determines that the respondent meets the criteria for inpatient commitment may be

substituted for the first examination required by

G.S. 122C-263 if the clerk or magistrate issues a custody order within six hours after the

examination was performed.

(3) In no case may the respondent be physically forced to take medication or forceably detained for treatment unless he poses an immediate danger to himself or others. In such cases inpatient commitment proceedings shall be initiated.

(4) At any time that the outpatient treatment physician or center finds that the respondent no longer meets the criteria set out in G.S. 122C-263(d)(1), the physician or center shall so notify the court and the case shall be terminated; provided, however, if the respondent was initially committed as a result of conduct resulting in his being charged with a violent crime, including a crime involving an assault with a deadly weapon, and the respondent was found not guilty by reason of insanity or incapable of proceeding, the designated outpatient treatment physician or center shall notify the clerk that discharge is recommended. The clerk shall calendar a supplemental hearing as provided in G.S. 122C-274 to determine whether the respondent meets the criteria for outpatient commitment.

(5) Any individual who has knowledge that a respondent on outpatient commitment has become dangerous to himself or others as defined by G.S. 122C-3(11) may initiate a new petition for inpatient commitment as provided in this Part. If the respondent is committed as an inpatient, the outpatient commitment shall be terminated and notice sent by the clerk of court in the county where the respondent is committed as an inpatient to the clerk of court of the county where the outpatient commitment is being supervised.

(b) If the respondent on outpatient commitment intends to move or moves to another county within the State, the designated outpatient treatment physician or center shall request that the clerk of court in the county where the outpatient commitment is being supervised calendar a supplemental hearing.

(c) If the respondent moves to another state or to an unknown location, the designated outpatient treatment physician or center shall notify the clerk of superior court of the county where the outpatient commitment is supervised and the outpatient commitment shall be terminated.

(d) If the commitment order directs inpatient treatment, the physician attending the respondent may administer to the respondent reasonable and appropriate medication and treatment that are consistent with accepted medical standards. The attending physician shall release or discharge the respondent in accordance with G.S. 122C-277.

"**§ 122C-274. Supplemental hearings.–**(a) Upon receipt of a request for a supplemental hearing, the clerk shall calendar a hearing to be held within 14 days and notify, at least 72 hours before the hearing, the petitioner, the respondent, his attorney, if any, and the designated outpatient treatment physician or center. The respondent shall be notified at least 72 hours before the hearing by personally serving on him an order to appear. Other persons shall be notified as provided in G.S. 122C-264(c).

(b) The procedures for the hearing shall follow G.S. 122C-267. (c) In supplemental hearings for alleged noncompliance, the court shall determine whether the

respondent has failed to comply and, if so, the causes for noncompliance. If the court determines that the respondent has failed or refused to comply it may:

(1) Upon finding probable cause to believe that the respondent is mentally ill and dangerous to himself or others, order an examination by the same or different physician as provided in G.S. 122C-263(c) in order to determine the necessity for continued outpatient or inpatient commitment;

(2) Reissue or change the outpatient commitment order in accordance with G.S. 122C-271; or

(3) Discharge the respondent from the order and dismiss the case.

(d) At the supplemental hearing for a respondent who has moved or intends to move to another county, the court shall determine if the respondent meets the criteria for outpatient commitment set out in G.S. 122C-263(d)(1). If the court determines that the respondent no longer meets the criteria for outpatient commitment, it shall discharge the respondent from the order and dismiss the case. If the court determines that the respondent continues to meet the criteria for outpatient commitment, it shall continue the outpatient commitment but shall designate a physician or center at the respondent's new residence to be responsible for the management or supervision of the respondent's outpatient commitment. The court shall order the respondent to appear for treatment at the address of the newly designated outpatient treatment physician or center and shall order venue for further court proceedings under the outpatient commitment to be transferred to the new county of supervision. Upon an order changing venue, the clerk of court in the county where the outpatient commitment has been supervised shall transfer the records regarding the outpatient commitment to the clerk of court in the county where the commitment will be supervised. Also, the clerk of court in the county where the outpatient commitment has been supervised shall send a copy of the court's order directing the continuation of outpatient treatment under new supervision to the newly designated outpatient treatment physician or center.

(e) At any time during the term of an outpatient commitment order, a respondent may apply to the court for a supplemental hearing for the purpose of discharge from the order. The application shall be made in writing by the respondent to the clerk of superior court of the county where the outpatient commitment is being supervised. At the supplemental hearing the court shall determine whether the respondent continues to meet the criteria specified in G.S. 122C-263(d)(1). The court may either reissue or change the commitment order or discharge the respondent and dismiss the case.

(f) At supplemental hearings requested pursuant to G.S. 122C- 277(a) for transfer from inpatient to outpatient commitment, the court shall determine whether the respondent meets the criteria for either inpatient or outpatient commitment. If the court determines that the respondent continues to meet the criteria for inpatient commitment, it shall order the continuation of the original commitment order. If the court determines that the respondent meets the criteria for outpatient commitment, it shall order outpatient commitment for a period of time not in excess of 90 days. If the court finds that the respondent does not meet either criteria, the respondent shall be discharged and the case dismissed.

"**§ 122C-275. Outpatient commitment; rehearings.–**(a) Fifteen days before the end of the initial or subsequent periods of outpatient commitment if the outpatient treatment physician or center determines that the respondent continues to meet the criteria specified in G.S. 122C-263(d)(1), he shall so notify the clerk of superior court of the county where the outpatient commitment is supervised. If the respondent no longer meets the criteria, the physician shall so notify the clerk who shall dismiss the case; provided, however, if the respondent was initially committed as a result of conduct resulting in his being charged with a violent crime, including a crime involving an assault with a deadly weapon, and the respondent was found not guilty by reason of insanity or incapable of proceeding, the physician or center shall notify the clerk that discharge is recommended. The clerk, at least 10 days before the end of the commitment period, on order of the district court, shall calendar the rehearing.

(b) Notice and procedures of rehearings are governed by the same procedures as initial hearings, and the respondent has the same rights he had at the initial hearing including the right to appeal.

(c) If the court finds that the respondent no longer meets the criteria of G.S. 122C-263(d)(1), it shall unconditionally discharge him. A copy of the discharge order shall be furnished by the clerk to the designated outpatient treatment physician or center. If the respondent continues to meet the criteria of G.S. 122C-263(d)(1), the court may order outpatient commitment for an additional period not in excess of 180 days.

"**§ 122C-276. Inpatient commitment; rehearings.–**(a) Fifteen days before the end of the initial inpatient commitment period if the attending physician determines that commitment of a respondent beyond the initial period will be necessary, he shall so notify the clerk of superior court of the county in which the facility is located. The clerk, at least 10 days before the end of the initial period, on order of a district court judge of the judicial district in which the facility is located, shall calendar the rehearing. If the respondent was initially committed as the result of conduct resulting in his being charged with a violent crime, including a crime involving an assault with a deadly weapon, and respondent was found not guilty by reason of insanity or incapable of proceeding, the clerk shall also notify the chief district court judge, the clerk of superior court, and the district attorney in the county in which the respondent was found not guilty by reason of insanity or incapable of proceeding of the time and place of the hearing.

(b) Fifteen days before the end of the initial treatment period of a respondent who was initially committed as a result of conduct resulting in his being charged with a violent crime, including a crime involving an assault with a deadly weapon, having been found not guilty by reason of insanity or incapable of proceeding, if the attending physician determines that commitment of the respondent beyond the initial period will not be necessary, he shall so notify the clerk of superior court who shall schedule a rehearing as provided in subsection (a) of this section.

(c) Subject to the provisions of G.S. 122C-269(c), rehearings shall be held at the facility in which the respondent is receiving treatment. The judge is a judge of the district court of the judicial district in which the facility is located or a district court judge temporarily assigned to that district.

(d) Notice and proceedings of rehearings are governed by the same procedures as initial hearings and the respondent has the same rights he had at the initial hearing including the right to appeal.

(e) At rehearings the court may make the same dispositions authorized in G.S. 122C-271(b) except a second commitment order may be for an additional period not in excess of 180 days.

(f) Fifteen days before the end of the second commitment period and annually thereafter, the attending physician shall review and evaluate the condition of each respondent; and if he determines that a respondent is in continued need of inpatient commitment or, in the alternative, in need of outpatient commitment, or a combination of both, he shall so notify the respondent, his counsel, and the clerk of superior court of the county in which the facility is located. Unless the respondent through his counsel files with the clerk a written waiver of his right to a rehearing, the clerk, on order of a district court judge of the district in which the facility is located, shall calendar a rehearing for not later than the end of the current commitment period. The procedures and standards for the rehearing are the same as for the first rehearing. No third or subsequent inpatient recommitment order shall be for a period longer than one year.

(g) At any rehearings the court has the option to order outpatient commitment for a period not in excess of 180 days in accordance with the criteria specified in G.S. 122C-263(d)(1) and following the procedures as specified in this Article.

"**§ 122C-277. Release and conditional release; judicial review.–**(a) Except as provided in subsection (b) of this section, the attending physician shall discharge a committed respondent unconditionally at any time he determines that the respondent is no longer in need of inpatient commitment. 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 may request the clerk to calendar a supplemental hearing to determine whether an outpatient commitment order shall be issued. Except as provided in subsection (b) of this section, the attending physician may also release a respondent conditionally for periods not in excess of 30 days on specified medically appropriate conditions. Violation of the conditions is grounds for return of the respondent to the releasing facility. A law enforcement officer, on request of the attending physician, shall take a conditional releasee into custody and return him to the facility in accordance with G.S. 122C-205. Notice of discharge and of conditional release shall be furnished to the clerk of superior court of the county of commitment and of the county in which the facility is located.

(b) If the respondent was initially committed as the result of conduct resulting in his being charged with a violent crime, including a crime involving an assault with a deadly weapon, and respondent was found not guilty by reason of insanity or incapable of proceeding, 15 days before the respondent's discharge or conditional release the attending physician shall notify the clerk of superior court of the county in which the facility is located of his determination regarding the proposed discharge or conditional release. The clerk shall then schedule a rehearing to determine the appropriateness of respondent's release under the standards of commitment set forth in G.S. 122C- 271(b). The clerk shall give notice as provided in G.S. 122C- 264(d). The district attorney of the

district where respondent was found not guilty by reason of insanity or incapable of proceeding may represent the State's interest at the hearing.

(c) If a committed respondent under either subsection (a) or (b) of this section is from a single portal area, the attending physician shall plan jointly with the area authority as prescribed in the area plan before discharging or releasing the respondent.

"Part 8. Involuntary Commitment of Substance Abusers, Facilities for Substance Abusers.

"**§ 122C-281. Affidavit and petition before clerk or magistrate; custody order.–**(a) Any individual who has knowledge of a substance abuser who is dangerous to himself or others may appear before a clerk or assistant or deputy clerk of superior court or a magistrate, execute an affidavit to this effect, and petition the clerk or magistrate for issuance of an order to take the respondent into custody for examination by a physician. The affidavit shall include the facts on which the affiant's opinion is based. Jurisdiction under this subsection is in the clerk or magistrate in the county where the respondent resides or is found.

(b) If the clerk or magistrate finds reasonable grounds to believe that the facts alleged in the affidavit are true and that the respondent is probably a substance abuser and dangerous to himself or others, he shall issue an order to a law enforcement officer or any other person authorized by G.S. 122C-251 to take the respondent into custody for examination by a physician.

(c) If the clerk or magistrate issues a custody order, he shall also make inquiry in any reliable way as to whether the respondent is indigent within the meaning of G.S. 7A-450. A magistrate shall report the result of this inquiry to the clerk.

(d) If the affiant is a physician, he may execute the affidavit before any official authorized to administer oaths. He is not required to appear before the clerk or magistrate for this purpose. His examination shall comply with the requirements of the initial examination as provided in G.S. 122C-283(c). If the physician petitioner's recommendation is for commitment and the clerk or magistrate finds probable cause to believe that the respondent meets the criteria for commitment, he shall issue an order for transportation to or custody at a 24-hour facility or release the respondent, pending hearing, as described in G.S. 122C-283(d)(1). If a physician executes an affidavit for commitment of a respondent, a second qualified professional shall perform the examination required by G.S. 122C-285.

(e) Upon receipt of the custody order of the clerk or magistrate, a law enforcement officer or other person designated in the order shall take the respondent into custody within 24 hours after the order is signed.

(f) When a petition is filed for an individual who is a resident of a single portal area, the procedures for examination by a physician as set forth in G.S. 122C-283(c) shall be carried out in accordance with the area plan. When an individual from a single portal area is presented for commitment at a facility directly, he may be accepted for admission in accordance with G.S. 122C-285. The facility shall notify the area authority within 24 hours of admission and further planning of treatment for the individual is the joint responsibility of the area authority and the facility as prescribed in the area plan.

"**§ 122C-282. Special emergency procedure for violent individuals.–**When an individual subject to commitment under the provisions of this Part is also violent and requires restraint and when delay in taking him to a physician for examination would likely endanger life or property, a law enforcement officer may take the person into custody and take him immediately before a magistrate or clerk. The law enforcement officer shall execute the affidavit required by G.S. 122C-281 and in addition shall swear that the respondent is violent and requires restraint and that delay in taking the respondent to a physician for an examination would endanger life or property.

If the clerk or magistrate finds by clear, cogent, and convincing evidence that the facts stated in the affidavit are true, that the respondent is in fact violent and requires restraint, and that delay in taking the respondent to a physician for an examination would endanger life or property, he shall order the law enforcement officer to take the respondent directly to a 24-hour facility described in G.S. 122C-252.

Respondents received at a 24-hour facility under the provisions of this section shall be examined and processed thereafter in the same way as all other respondents under this Part.

"**§ 122C-283. Duties of law enforcement officer; first examination by physician.–**(a) Without unnecessary delay after assuming custody, the law enforcement officer or the individual designated by the clerk or magistrate under G.S. 122C-251(g) to provide transportation shall take the respondent to an area facility for examination by a physician; if a physician is not available in the area facility, he shall take the respondent to any physician locally available. If a physician is not immediately available, the respondent may be temporarily detained in an area facility if one is available; if an area facility is not available, he may be detained under appropriate supervision, in his home, in a private hospital or a clinic, or in a general hospital, but not in a jail or other penal facility.

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

(1) The affiant who obtained the custody order is a physician; or

(2) The respondent is in custody under the special emergency procedure described in G.S. 122C-282.

In these cases when it is recommended that the respondent be detained in a 24-hour facility, the law enforcement officer shall take the respondent directly to a 24-hour facility described in G.S. 122C-252.

(c) The physician described in subsection (a) of this section shall examine the respondent as soon as possible, and in any event within 24 hours, after the respondent is presented for examination. The examination shall include but is not limited to an assessment of the respondent's:

(1) Current and previous substance abuse including, if available, previous treatment history; and

(2) Dangerousness to himself or others as defined in G.S. 122C-3(11).

(d) After the conclusion of the examination the physician shall make the following determinations:

(1) If the physician finds that the respondent is a substance abuser and is dangerous to himself or others, he shall recommend commitment and whether the respondent should be released or be held at a 24-hour facility pending hearing and shall so show on the physician's examination report. Based on the physician's recommendation the law enforcement officer or other designated individual shall take the respondent to a 24-hour facility described in G.S. 122C-252 or release the respondent.

(2) If the physician finds that the condition described in subdivision (1) of this subsection does not exist, the respondent shall be released and the proceedings terminated.

(e) The findings of the physician and the facts on which they are based shall be in writing in all cases. A copy of the findings shall be sent to the clerk of superior court by the most reliable and expeditious means. If it cannot be reasonably anticipated that the clerk will receive the copy within 48 hours of the time that it was signed, the physician shall also communicate his findings to the clerk by telephone.

"**§ 122C-284. Duties of clerk of superior court.–**(a) Upon receipt of a physician's finding that a respondent is a substance abuser and dangerous to himself or others and that commitment is recommended, the clerk of superior court of the county where the facility is located, if the respondent is held in a 24-hour facility, or the clerk of superior court where the petition was initiated shall upon direction of a district court judge assign counsel, calendar the matter for hearing, and notify the respondent, his counsel, and the petitioner of the time and place of the hearing. The petitioner may file a written waiver of his right to notice under this subsection with the clerk of court.

(b) Notice to the respondent required by subsection (a) of this section shall be given as provided in G.S. 1A-1, Rule 4(j) at least 72 hours before the hearing. Notice to other individuals shall be given by mailing at least 72 hours before the hearing a copy by first-class mail postage prepaid to the individual at his last known address.

(c) Upon receipt of notice that transportation is necessary to take a committed respondent to a 24-hour facility pursuant to G.S. 122C-290(b), the clerk shall issue a custody order for the respondent.

(d) The clerk of superior court shall upon the direction of a district court judge calendar all hearings, supplemental hearings, and rehearings and provide all notices required by this Part.

"**§ 122C-285. Commitment; second examination and treatment pending hearing.–**(a) Within 24 hours of arrival at a 24-hour facility described in G.S. 122C-252, the respondent shall be examined by a qualified professional. The examination shall include the assessment specified in G.S. 122C-283(c). If the qualified professional finds that the respondent is a substance abuser and is dangerous to himself or others, he shall hold and treat the respondent at the facility or designate other treatment pending the district court hearing. If the qualified professional finds that the respondent does not meet the criteria for commitment under G.S. 122C-283(d)(1), he shall release the respondent and the proceeding shall be terminated. In this case the reasons for the release shall be reported in writing to the clerk of superior court of the county in which the custody order

originated. If the respondent is released, the law enforcement officer or other person designated to provide transportation shall return the respondent to the originating county.

"**§ 122C-286. Commitment; district court hearing.–**(a) A hearing shall be held in district court within 10 days of the day the respondent is taken into custody. Upon its own motion or upon motion of the responsible professional, the respondent, or the State, the court may grant a continuance of not more than five days.

(b) The respondent shall be present at the hearing. A subpoena may be issued to compel the respondent's presence at a hearing. The petitioner and the responsible professional of the area authority or the proposed treating physician or his designee may be present and may provide testimony.

(c) Certified copies of reports and findings of physicians and medical records of previous and current treatment are admissible in evidence, but the respondent's right to confront and cross- examine witnesses shall not be denied.

(d) The respondent may be represented by counsel of his choice. If the respondent is indigent within the meaning of G.S. 7A-450, the court shall appoint counsel to represent him.

(e) Hearings may be held at an area facility or a private facility if it is located within the judge's judicial district or in the judge's chambers. A hearing may not be held in a regular courtroom, over objection of the respondent, if in the discretion of a judge a more suitable place is available.

(f) The hearing shall be closed to the public unless the respondent requests otherwise.

(g) A copy of all documents admitted shall be furnished by the clerk to the respondent on request. If the respondent is indigent, the copies shall be provided at State expense.

(h) To support a commitment order, the court shall find by clear, cogent, and convincing evidence that the respondent meets the criteria specified in G.S. 122C-283(d)(1). The court shall record the facts that support its findings and shall show on the order the area authority or physician who is responsible for the management and supervision of the respondent's treatment.

"**§ 122C-287. Disposition.–**The court may make one of the following dispositions:

(1) If the court finds by clear, cogent, and convincing evidence that the respondent is a substance abuser and is dangerous to himself or others, it shall order for a period not in excess of 180 days commitment to and treatment by an area authority or physician who is responsible for the management and supervision of the respondent's commitment and treatment.

(2) If the court finds that the respondent does not meet the commitment criteria set out in subdivision (1) of this subsection, the respondent shall be discharged and the facility in which he was last treated so notified.

"**§ 122C-288. Appeal.–**Judgment of the district court is final.

Appeal may be had to the Court of Appeals by the State or by any party on the record as in civil cases. Appeal does not stay the commitment unless so ordered by the Court of

Appeals. The Attorney General shall represent the State's interest on appeal. The district court retains limited jurisdiction for the purpose of hearing all reviews, rehearings, or supplemental hearings allowed or required under this Part.

"**§ 122C-289. Duty of assigned counsel; discharge.–**Counsel assigned to represent an indigent respondent at the initial district court hearing is also responsible for perfecting and concluding an appeal. Upon completion of an appeal, assigned counsel is discharged. If the respondent is committed, assigned counsel remains responsible for his representation until discharged by order of district court or until the respondent is otherwise unconditionally discharged.

"**§ 122C-290. Duties for follow-up on commitment order.–**(a) The area authority or physician responsible for management and supervision of the respondent's commitment and treatment may prescribe or administer to the respondent reasonable and appropriate treatment either on an outpatient basis or in a 24- hour facility.

(b) If the respondent whose treatment is provided on an outpatient basis fails to comply with all or part of the prescribed treatment after reasonable effort to solicit the respondent's compliance, the area authority or physician may have the respondent taken to a 24-hour facility described in G.S. 122C-252. Transportation shall be provided as specified in G.S. 122C-251 upon notice by the area authority or physician that transportation is necessary. Prior to the placement in the 24- hour facility, a physician shall determine that treatment in the facility will benefit the respondent. If placement in a 24-hour facility is to exceed 45 consecutive days, the area authority or physician shall notify the clerk of court by the 30th day and request a supplemental hearing as specified in G.S. 122C-291.

(c) If the respondent intends to move or moves to another county within the State, the area authority or physician shall notify the clerk of court in the county where the commitment is being supervised and request that a supplemental hearing be calendared.

(d) If the respondent moves to another state or to an unknown location, the designated area authority or physician shall notify the clerk of superior court of the county where the commitment is supervised and the commitment shall be terminated.

"**§ 122C-291. Supplemental hearings.–**(a) Upon receipt of a request for a supplemental hearing, the clerk shall calendar a hearing to be held within 14 days and notify, at least 72 hours before the hearing, the petitioner, the respondent, his attorney, if any, and the designated area authority or physician. Notice shall be provided in accordance with G.S. 122C-284(b). The procedures for the hearing shall follow G.S. 122C-286.

(b) At the supplemental hearing for a respondent who has moved or may move to another county, the court shall determine if the respondent meets the criteria for commitment set out in G.S. 122C-283(d)(1). If the court determines that the respondent no longer meets the criteria for commitment, it shall discharge the respondent from the order and dismiss the case. If the court determines that the respondent continues to meet the criteria for commitment, it shall continue the commitment but shall designate an area authority or physician at the respondent's new residence to be responsible for the management or supervision of the respondent's commitment. The court shall order the

respondent to appear for treatment at the address of the newly designated area authority or physician and shall order venue for further court proceedings under the commitment to be transferred to the new county of supervision. Upon an order changing venue, the clerk of court in the county where the commitment has been supervised shall transfer the records regarding the commitment to the clerk of court in the county where the commitment will be supervised. Also, the clerk of court in the county where the commitment has been supervised shall send a copy of the court's order directing the continuation of treatment under new supervision to the newly designated area authority or physician.

(c) At a supplemental hearing for a respondent to be held longer than 45 consecutive days in a 24-hour facility, the court shall determine if the respondent meets the criteria for commitment set out in G.S. 122C-283(d)(1). If the court determines that the respondent continues to meet the criteria and that further treatment in the 24-hour facility is necessary, the court may authorize continued care in the facility for not more than 90 days, after which a rehearing for the purpose of determining the need for continued care in the 24-hour facility shall be held, or the court may order the respondent released from the 24-hour facility and continued on the commitment on an outpatient basis. If the court determines that the respondent no longer meets the criteria for commitment, the respondent shall be released and his case dismissed.

(d) At any time during the term of commitment order, a respondent may apply to the court for a supplemental hearing for the purpose of discharge from the order. The application shall be made in writing to the clerk of superior court. At the supplemental hearing the court shall determine whether the respondent continues to meet the criteria for commitment. The court may reissue or change the commitment order or discharge the respondent and dismiss the case.

"**§ 122C-292. Rehearings.–**(a) Fifteen days before the end of the initial or subsequent periods of commitment if the area authority or physician determines that the respondent continues to meet the criteria specified in G.S. 122C-283(d)(1), the clerk of superior court of the county where commitment is supervised shall be notified. The clerk, at least 10 days before the end of the commitment period, on order of the district court, shall calendar the rehearing. If the respondent no longer meets the criteria, the area authority or physician shall so notify the clerk who shall dismiss the case.

(b) Rehearings are governed by the same notice and procedures as initial hearings, and the respondent has the same rights he had at the initial hearing including the right to appeal.

(c) If the court finds that the respondent no longer meets the criteria of G.S. 122C-283(d)(1), it shall unconditionally discharge him. A copy of the discharge order shall be furnished by the clerk to the designated area authority or physician. If the respondent continues to meet the criteria of G.S. 122C- 283(d)(1), the court may order commitment for additional periods not in excess of 365 days each.

"**§ 122C-293. Release by area authority or physician.–**The area authority or physician as designated in the order shall discharge a committed respondent unconditionally at any time he determines that the respondent no longer meets the criteria of G.S. 122C-283(d)(1). Notice of discharge and the reasons for the release shall be reported in

writing to the clerk of superior court of the county in which the commitment was ordered.

"**§ 122C-294. Local plan.–**Each area authority shall develop a local plan with local law enforcement agencies, local courts, local hospitals, and local medical societies necessary to facilitate implementation of this Part.

"Part 9. Public Intoxication.

"**§ 122C-301. Assistance to an individual who is intoxicated in public; procedure for commitment to shelter or facility.–**(a) An officer may assist an individual found intoxicated in a public place by taking any of the following actions:

(1) The officer may direct or transport the intoxicated individual home;

(2) The officer may direct or transport the intoxicated individual to the residence of another individual willing to accept him;

(3) If the intoxicated individual is apparently in need of and apparently unable to provide for himself food, clothing, or shelter but is not apparently in need of immediate medical care, the officer may direct or transport him to an appropriate public or private shelter facility;

(4) If the intoxicated individual is apparently in need of but apparently unable to provide for himself immediate medical care, the officer may direct or transport him to an area facility, hospital, or physician's office; or the officer may direct or transport the individual to any other appropriate health care facility; or

(5) If the intoxicated individual is apparently a substance abuser and is apparently dangerous to himself or others, the officer may proceed as provided in Part 8 of this Article.

(b) In providing the assistance authorized by subsection (a) of this section, the officer may use reasonable force to restrain the intoxicated individual if it appears necessary to protect himself, the intoxicated individual, or others. No officer may be held criminally or civilly liable for assault, false imprisonment, or other torts or crimes on account of reasonable measures taken under authority of this Part.

(c) If the officer takes the action described in either subdivision (a)(3) or (a)(4) of this section, the facility to which the intoxicated individual is taken may detain him only until he becomes sober or a maximum of 24 hours. The individual may stay a longer period if he wishes to do so and the facility is able to accommodate him.

(d) Any individual who has knowledge that a person assisted to a shelter or other facility under subdivisions (a)(3) or (a)(4) of this section is a substance abuser and is dangerous to himself or others may proceed as provided in Part 8 of this Article.

"**§ 122C-302. Cities and counties may employ officers to assist intoxicated individuals.–**A city or county may employ officers to assist individuals who are intoxicated in public. Officers employed for this purpose shall be trained to give assistance to those who are intoxicated in public including the administration of first aid. An officer employed by a city or county to assist intoxicated individuals has the powers and duties set out in G.S. 122C-301 within the same territory in which criminal laws are enforced by law enforcement officers of that city or county.

"**§ 122C-303. Use of jail for care for intoxicated individual.–**In addition to the actions authorized by G.S. 122C- 301(a), an officer may assist an individual found intoxicated in a public place by directing or transporting that individual to a city or county jail. That action may be taken only if the intoxicated individual is apparently in need of and apparently unable to provide for himself food, clothing, or shelter but is not apparently in need of immediate medical care and if no other facility is readily available to receive him. The officer and employees of the jail are exempt from liability as provided in G.S. 122C-301(b). The intoxicated individual may be detained at the jail only until he becomes sober or a maximum of 24 hours and may be released at any time to a relative or other individual willing to be responsible for his care.

"Part 10. Voluntary Admissions,
Involuntary Commitments and Discharges,
Inmates and Parolees, Department of Correction.

"**§ 122C-311. Individuals on parole.–**Any individual who has been released from any correctional facility on parole is admitted, committed and discharged from facilities in accordance with the procedures specified in this Article for other individuals.

"**§ 122C-312. Voluntary admissions and discharges of inmates of the Department of Correction.–**Inmates in the custody of the Department of Correction may seek voluntary admission to State facilities for the mentally ill or substance abusers. The provisions of Part 2 of this Article shall apply except that an admission may be accomplished only when the Secretary and the Secretary of the Department of Correction jointly agree to the inmate's request. When an inmate is admitted he shall be discharged in accordance with the provisions of Part 2 of this Article except that an inmate who is ready for discharge, but still under a term of incarceration, shall be discharged only to an official of the Department of Correction. The Department of Correction is responsible for the security and cost of transporting inmates to and from facilities under the provisions of this section.

"**§ 122C-313. Inmate becoming mentally ill and dangerous to himself or others.–**(a) An inmate who becomes mentally ill and dangerous to himself or others after incarceration in any facility operated by the Department of Correction in the State is processed in accordance with Part 7 of this Article, as modified by this section, except when the provisions of Part 7 are manifestly inappropriate. A staff psychiatrist of the correctional facility shall execute the affidavit required by G.S. 122C-261 and send it to the clerk of superior court of the county in which the correctional facility is located. Upon receipt of the affidavit, the clerk shall calendar a district court hearing and notify the respondent and his counsel as required by G.S. 122C-284(a). The hearing is conducted in a district courtroom. If the judge finds by clear, cogent, and convincing evidence that the respondent is mentally ill and dangerous to himself or others, he shall order him transferred for treatment to a State facility designated by the Secretary. The judge shall not order outpatient commitment for an inmate- respondent.

(b) If the sentence of an inmate-respondent expires while he is committed to a State facility, he is considered in all respects as if he had been initially committed under Part 7 of this Article.

(c) If the sentence of an inmate-respondent has not expired, and if in the opinion of the attending physician of the State facility an inmate-respondent ceases to be mentally ill and dangerous to himself or others, he shall notify the Department of Correction which shall arrange for the inmate-respondent's return to a correctional facility.

(d) Special counsel at a State facility shall represent any inmate who becomes mentally ill and dangerous to himself or others while confined in a correctional facility in the same county, otherwise counsel is assigned in accordance with G.S. 122C-270(d).

(e) The Department of Correction is responsible for the security and cost of transporting inmates to and from State facilities under the provisions of this section.

"Part 11. Voluntary Admissions, Involuntary Commitments and Discharges, the Psychiatric Service of

North Carolina Memorial Hospital.

"**§ 122C-321. Voluntary admissions and discharges.–**Any individual in need of treatment for mental illness or substance abuse may seek voluntary admission to the psychiatric service of North Carolina Memorial Hospital. Procedures for admission and discharge shall be made in accordance with Parts 2 through 4 of this Article. The applicant may be admitted only upon the approval of the director of the psychiatric service or his designee.

"**§ 122C-322. Involuntary commitments.–**(a) Except as otherwise specifically provided in this section references in Parts 6 through 8 of this Article to 24-hour facilities, outpatient treatment centers, or area authorities, or private facilities shall include the psychiatric service of North Carolina Memorial Hospital. The psychiatric service may be used for temporary detention pending a district court hearing, for commitment of the respondent after the hearing, or as the manager and supervisor of outpatient commitment. However, no individual may be held at or committed to the psychiatric service without the prior approval of the director of the psychiatric service or his designee.

(b) Initial hearings, supplemental hearings, and rehearings may be held at the psychiatric service facility or at any place in Orange County where district court can be held under G.S. 7A- 133. Legal counsel for the respondent at all hearings and rehearings shall be assigned from among the members of the bar of the same county in accordance with G.S. 122C-270(d).

"Part 12. Voluntary Admissions, Involuntary Commitments and Discharges, Veterans Administration Facilities.

"**§ 122C-331. Voluntary admissions and discharges.–**Veterans in need of treatment for mental illness or substance abuse may seek voluntary admission to a facility operated by the Veterans Administration. Procedures for admission and discharge shall be made in accordance with Parts 2 and 4 of this Article. The Veterans Administration may require additional procedures not inconsistent with these Parts.

"**§ 122C-332. Involuntary commitments.–**(a) Except as otherwise specifically provided in this section, references in Parts 6 through 8 of this Article to 24-hour facilities, outpatient treatment centers, or area authorities, or private facilities shall include the facilities operated by the Veterans Administration. Veterans Administration

facilities may be used for temporary detention pending a district court hearing, for commitment of the respondent after the hearing, or as the manager and supervisor of outpatient commitment. Eligibility of the veteran-respondent for treatment at a Veterans Administration facility and the availability of space shall be determined by the Veterans Administration in all cases before sending or committing a veteran-respondent.

(b) Initial hearings, supplemental hearings, and rehearings for veteran-respondents may be held at the facility or at the county courthouse in the county in which the facility is located, and counsel shall be assigned from among the members of the bar of the same county in accordance with G.S. 122C-270(d).

"**§ 122C-333. Order of another state.–**The judgment or order of commitment by a court of competent jurisdiction of another state, committing a person to the Veterans Administration or another federal agency that is located in this State shall have the same force and effect on the committed person while in this State as in the jurisdiction of the court entering the judgment or making the order. The courts of the committing state shall retain jurisdiction of the person so committed for the purpose of inquiring into the mental condition of the person, and for determining the necessity for continuance of his restraint. Consent is given to the application of the law of the committing state on the authority of the chief officer of any facility of the Veterans Administration or of any institution operated in this State by any other federal agency to retain custody, transfer, parole, or discharge the committed person.

"Part 13. Voluntary Admissions, Involuntary Commitment and Discharge of Non-State Residents and the Return of North Carolina Resident Clients.

"**§ 122C-341. Determination of residence.–**It is the responsibility of the facility to determine if a client is not a resident of the State.

"**§ 122C-342. Voluntary admissions and discharges.–**A non-State resident may be admitted to and discharged from a facility on a voluntary basis in accordance with Parts 2 through 5 of this Article at his own expense. If the facility determines that the client should be returned to his own state the provisions of G.S. 122C-345 or G.S. 122C-361, as appropriate, shall apply.

"**§ 122C-343. Involuntary commitments.–**Involuntary commitments of non-State residents are made under the provisions of Parts 6 through 8 of this Article. If after commitment to a 24-hour facility the facility determines that the respondent needs long-term care and should be returned to his state of residence, the provisions of G.S. 122C-345 or G.S. 122C-361, as appropriate, shall apply.

"**§ 122C-344. Citizens of other countries.–**In addition to the provisions of G.S. 122C-341 through G.S. 122C-343, if a 24-hour facility determines that a client is not a citizen of the United States, the facility shall notify the Governor of this State of the name of the client, the country and place of his residence in the country and other facts in the case as can be obtained, together with a copy of pertinent medical records. The Governor shall send the information to the Secretary of State at Washington, D.C., with the request that he tell the minister resident or plenipotentiary of the country of which the client is alleged to be a citizen.

"**§ 122C-345. Return of a non-State resident client to his resident state.–**(a) Except as provided in subsection (c) of this section, it is the responsibility of the

director of a facility to arrange for the transfer of a client to his resident state. The cost of returning the client to his resident state is the responsibility of the client or his family.

(b) A non-State resident client of an area 24-hour facility may be transferred to a State facility in accordance with G.S. 122C-206 in order for the client to be returned to his resident state.

(c) A non-State resident client of a State facility may be returned to his resident state under procedures established under G.S. 122C-346 or G.S. 122C-361. The cost of returning a client to his resident state under this subsection shall be the responsibility of the State.

"**§ 122C-346. Authority of the Secretary to enter reciprocal agreements.–**The Secretary may enter agreements with other states for the return of non-State resident clients to their resident state and for the return of North Carolina residents to North Carolina when under treatment in another state.

"**§ 122C-347. Return of North Carolina resident clients from other states.–**North Carolina residents who are in treatment in another state may be returned to North Carolina either under an agreement authorized in G.S. 122C-346 or under the provisions of G.S. 122C-361. The cost of returning a North Carolina resident to this State is the responsibility of the sending state. Within 72 hours after admission in a State facility, a returned resident shall be evaluated. The returned resident may agree to a voluntary admission or may be released, or proceedings for an involuntary commitment under this Article may be initiated as necessary by the responsible professional in the facility.

"**§ 122C-348. Residency not affected.–**(a) A nonresident of this State who is under care in a 24-hour facility in this State is not considered a resident. No length of time spent in this State while a client in a 24-hour facility is sufficient to make a nonresident a resident or entitled to care or treatment.

(b) A North Carolina resident who is under care and treatment in a 24-hour facility in another state shall retain his residency in North Carolina.

"Part 14. Interstate Compact on Mental Health.

"**§ 122C-361. Compact entered into; form of Compact.–**The Interstate Compact on Mental Health is hereby enacted into law and entered into by this State with all other states legally joining therein in the form substantially as follows: The contracting states solemnly agree that:

ARTICLE I.

The party states find that the proper and expeditious treatment of the mentally ill and mentally deficient can be facilitated by cooperative action, to the benefit of the patients, their families, and society as a whole. Further, the party states find that the necessity of and desirability for furnishing such care and treatment bears no primary relation to the residence or citizenship of the patient but, that, on the contrary, the controlling factors of community safety and humanitarianism require that facilities and services be made available for all who are in need of them. Consequently, it is the purpose of this Compact and of the party states to provide the necessary legal basis for the institutionalization or other appropriate care and treatment of the mentally ill and mentally deficient under a system that recognizes the paramount importance of patient welfare and to establish the responsibilities of the party states in terms of such welfare.

ARTICLE II.

As used in this Compact:

(a) 'Sending state' shall mean a party state from which a patient is transported pursuant to the provisions of the Compact or from which it is contemplated that a patient may be so sent.

(b) 'Receiving state' shall mean a party state to which a patient is transported pursuant to the provisions of the Compact or to which it is contemplated that a patient may be so sent.

(c) 'Institution' shall mean any hospital or other facility maintained by a party state or political subdivision thereof for the care and treatment of mental illness or mental deficiency.

(d) 'Patient' shall mean any person subject to or eligible as determined by the laws of the sending state, for institutionalization or other care, treatment, or supervision pursuant to the provisions of this Compact.

(e) 'Aftercare' shall mean care, treatment and services provided a patient, as defined herein, on convalescent status or conditional release.

(f) 'Mental illness' shall mean mental disease to such extent that a person so afflicted requires care and treatment for his own welfare, or the welfare of others, or of the community.

(g) 'Mental deficiency' shall mean mental deficiency as defined by appropriate clinical authorities to such extent that a person so afflicted is incapable of managing himself and his affairs, but shall not include mental illness as defined herein.

(h) 'State' shall mean any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

ARTICLE III.

(a) Whenever a person physically present in any party state shall be in need of institutionalization by reason of mental illness or mental deficiency, he shall be eligible for care and treatment in an institution in that state irrespective of his residence, settlement or citizenship qualifications.

(b) The provisions of paragraph (a) of this Article to the contrary notwithstanding, any patient may be transferred to an institution in another state whenever there are factors based upon clinical determinations indicating that the care and treatment of said patient would be facilitated or improved thereby. Any such institutionalization may be for the entire period of care and treatment or for any portion or portions thereof. The factors referred to in this paragraph shall include the patient's full record with due regard for the location of the patient's family, character of the illness and probable duration thereof, and such other factors as shall be considered appropriate.

(c) No state shall be obliged to receive any patient pursuant to the provisions of paragraph (b) of this Article unless the sending state has given advance notice of its intention to send the patient; furnished all available medical and other pertinent records concerning the patient; given the qualified medical or other appropriate clinical authorities of the receiving state an opportunity to examine the patient if said authorities so wish; and unless the receiving state shall agree to accept the patient.

(d) In the event that the laws of the receiving state establish a system of priorities for the admission of patients, an interstate patient under this Compact shall receive the same priority as a local patient and shall be taken in the same order and at the same time that it would be taken if he were a local patient.

(e) Pursuant to this Compact, the determination as to the suitable place of institutionalization for a patient may be reviewed at any time and such further transfer of the patient may be made as seems likely to be in the best interest of the patient.

ARTICLE IV.

(a) Whenever, pursuant to the laws of the state in which a patient is physically present, it shall be determined that the patient should receive aftercare or supervision, such care or supervision may be provided in a receiving state. If the medical or other appropriate clinical authorities have responsibility for the care and treatment of the patient in the sending state shall have reason to believe that aftercare in another state would be in the best interest of the patient and would not jeopardize the public safety, they shall request the appropriate authorities in the receiving state to investigate the desirability of affording the patient such aftercare in said receiving state, and such investigation shall be made with all reasonable speed. The request for investigation shall be accompanied by complete information concerning the patient's intended place of residence and the identity of the person in whose charge it is proposed to place the patient, the complete medical history of the patient, and such other documents as may be pertinent.

(b) If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state and the appropriate authorities in the receiving state find that the best interest of the patient would be served thereby, and if the public safety would not be jeopardized thereby, the patient may receive aftercare or supervision in the receiving state.

(c) In supervising, treating, or caring for a patient on aftercare pursuant to the terms of this Article, a receiving state shall employ the same standards of visitation, examination, care, and treatment that it employs for similar local patients.

ARTICLE V.

Whenever a dangerous or potentially dangerous patient escapes from an institution in any party state, that state shall promptly notify all appropriate authorities within and without the jurisdiction of the escape in a way reasonably calculated to facilitate the speedy apprehension of the escapee. Immediately upon the apprehension and identification of any such dangerous or potentially dangerous patient, he shall be detained in the state where found pending disposition in accordance with law.

ARTICLE VI.

The duly accredited officers of any state party to this Compact, upon the establishment of their authority and the identity of the patient, shall be permitted to transport any patient being moved pursuant to this Compact through any and all states party to this Compact, without interference.

ARTICLE VII.

(a) No person shall be deemed a patient of more than one institution at any given time. Completion of transfer of any patient to an institution in a receiving state shall have the effect of making the person a patient of the institution in the receiving state.

(b) The sending state shall pay all costs of and incidental to the transportation of any patient pursuant to this Compact, but any two or more party states may, by making a specific agreement for that purpose, arrange for a different allocation of costs as among themselves.

(c) No provision of this Compact shall be construed to alter or affect any internal relationships among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

(d) Nothing in this Compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to any provision of this Compact.

(e) Nothing in this Compact shall be construed to invalidate any reciprocal agreement between a party state and a nonparty state relating to institutionalization, care or treatment of the mentally ill or mentally deficient, or any statutory authority pursuant to which such agreements may be made.

ARTICLE VIII.

(a) Nothing in this Compact shall be construed to abridge, diminish, or in any way impair the rights, duties, and responsibilities of any patient's guardian on his own behalf or in respect of any patient for whom he may serve, except that where the transfer of any patient to another jurisdiction makes advisable the appointment of a supplemental or substitute guardian, any court of competent jurisdiction in the receiving state may make such supplemental or substitute appointment and the court which appointed the previous guardian shall upon being duly advised of the new appointment, and upon the satisfactory completion of such accounting and other acts as such court may by law require, relieve the previous guardian of power and responsibility to whatever extent shall be appropriate in the circumstances; provided, however, that in the case of any patient having settlement in the sending state, the court of competent jurisdiction in the sending state shall have the sole discretion to relieve a guardian appointed by it or continue his power and responsibility, whichever it shall deem advisable. The court in the receiving state may, in its discretion, confirm or reappoint the person or persons previously serving as guardian in the sending state in lieu of making a supplemental or substitute appointment.

(b) The term 'guardian' as used in paragraph (a) of this Article shall include any guardian, trustee, legal committee, conservator, or other person or agency however denominated who is charged by law with power to act for or responsibility for the person or propery of a patient.

ARTICLE IX.

(a) No provision of this Compact except Article V shall apply to any person institutionalized while under sentence in a penal or correctional institution or while subject to trial on a criminal charge, or whose institutionalization is due to the

commission of an offense for which, in the absence of mental illness or mental deficiency, said person would be subject to incarceration in a penal or correctional institution.

(b) To every extent possible, it shall be the policy of states party to this Compact that no patient shall be placed or detained in any prison, jail or lockup, but such patient shall, with all expedition, be taken to a suitable institutional facility for mental illness or mental deficiency.

ARTICLE X.

(a) Each party state shall appoint a 'Compact Administrator' who, on behalf of his state, shall act as general coordinator of activities under the Compact in his state and who shall receive copies of all reports, correspondence, and other documents relating to any patient processed under the Compact by his state either in the capacity of sending or receiving state. The Compact Administrator or his duly designated representative shall be the official with whom other party states shall deal in any matter relating to the Compact or any patient processed thereunder.

(b) The Compact Administrators of the respective party states shall have power to promulgate reasonable rules and regulations to carry out more effectively the terms and provisions of this Compact.

ARTICLE XI.

The duly constituted administrative authorities of any two or more party states may enter into supplementary agreements for the provision of any service or facility or for the maintenance of any institution on a joint or cooperative basis whenever the states concerned shall find that such agreements will improve services, facilities, or institutional care and treatment in the fields of mental illness or mental deficiency. No such supplementary agreement shall be construed so as to relieve any party state of any obligation which it otherwise would have under other provisions of this Compact.

ARTICLE XII.

This Compact shall enter into full force and effect as to any state when enacted by it into law and such state shall thereafter be a party thereto with any and all states legally joining therein.

ARTICLE XIII.

(a) A state party to this Compact may withdraw therefrom by enacting a statute repealing the same. Such withdrawal shall take effect one year after notice thereof has been communicated officially and in writing to the governors and Compact administrators of all other party states. However, the withdrawal of any state shall not change the status of any patient who has been sent to said state or sent out of said state pursuant to the provisions of the Compact.

(b) Withdrawal from any agreement permitted by Article VII(b) as to costs or from any supplementary agreement made pursuant to Article XI shall be in accordance with the terms of such agreement.

ARTICLE XIV.

This Compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Compact shall be severable and if any phrase, clause, sentence or provision of this Compact is declared to be contrary to the constitution of any party state

or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this Compact shall be held contrary to the constitution of any state party thereto, the Compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

"**§ 122C-362. Compact Administrator.–**Pursuant to the Compact, the Secretary is the Compact Administrator and, acting jointly with like officers of other party states, may adopt rules to carry out more effectively the terms of the Compact. The Compact Administrator shall cooperate with all departments, agencies and officers of and in the government of this State and its subdivisions in facilitating the proper administration of the Compact, of any supplementary agreement, or agreements entered into by this State.

"**§ 122C-363. Supplementary agreements.–**The Compact Administrator may enter into supplementary agreements with appropriate officials of other states pursuant to Articles VII and XI of the Compact. In the event that these supplementary agreements shall require or contemplate the use of any institution or facility of this State or require or contemplate the provision of any service by this State, no such agreement shall be effective until approved by the head of the department or agency under whose jurisdiction the institution or facility is operated or whose department or agency will be charged with the rendering of this service.

"**§ 122C-364. Financial arrangements.–**The Compact Administrator, with the approval of the Director of the Budget, may make or arrange for any payments necessary to discharge any financial obligations imposed upon this State by the Compact or by any supplementary agreement entered into under it.

"**§ 122C-365. Transfer of clients.–**The Compact Administrator is directed to consult with the immediate family or legally responsible person of any proposed transferee.

"**§ 122C-366. Transmittal of copies of Part.–**Copies of this Part shall, upon its approval, be transmitted by the Compact Administrator to the governor of each state, the attorney general of each state, the Administrator of General Services of the United States, and the Council of State Governments.

"Article 6.

"Special Provisions.

"Part 1. Camp Butner and Community of Butner.

"**§ 122C-401. Use of Camp Butner Hospital authorized.–**The State may use the Camp Butner Hospital, including buildings, equipment, and land necessary for the operation of modern up-to- date facilities for the care and treatment of citizens of this State.

"**§ 122C-402. Application of State highway and motor vehicle laws at State institutions on Camp Butner reservation.–**The provisions of Chapter 20 of the General Statutes relating to the use of the highways of the State and the operation of motor vehicles thereon are made applicable to the streets, alleys, and driveways on the Camp Butner reservation that are on the grounds of any State facility or any State institution operated by the Department or by the Department of Correction. Any person violating any of the provisions of Chapter 20 of the General Statutes in or on these streets, alleys, or driveways shall upon conviction be punished as prescribed in that

Chapter. This section does not interfere with the ownership and control of the streets, alleys, and driveways on the grounds as is now vested by law in the Department.

"**§ 122C-403. Ordinances and rules for enforcement of Part.–** The Secretary may adopt rules and ordinances necessary to enforce the provisions of this Part and to carry out its purpose and intent for the better administration of State facilities and institutions located on the Camp Butner reservation. Included may be rules:

(1) To regulate the use of streets, alleys, sidewalks, bridges, and driveways and to establish parking areas.

(2) To promote the health, safety, morals, or general welfare of those residing on, occupying, renting, or using any property or facilities within its limits and those visiting and patronizing any State facility or State institution on the Camp Butner reservation by:

a. Regulating and restricting the height, number of stories, and size of buildings and other structures, the percentage of lot to be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes, to regulate markets, and prescribe at what place marketable products may be sold, and to condemn and remove all buildings or cause them to be removed at the expense of the owner, when dangerous to life, health, or other property.

b. To regulate places of amusement and entertainment, and to regulate, restrict, or prohibit the operation of pool and billiard halls, dance halls, carnivals, circuses, or any itinerant show or exhibition of any kind. Places of amusement and entertainment include coffee houses, cocktail lounges, night clubs, beer halls, and similar establishments. Any regulations shall be consistent with any permits issued by the North Carolina Alcoholic Beverage Control Commission.

c. To regulate and prohibit the running at large of dogs, horses, mules, cattle, sheep, swine, goats, chickens, and other animals and fowl of every description.

d. To prevent and abate nuisances whether on public or private property.

e. To regulate the subdivision of land. This regulation shall be in accordance with the procedures and subject to the limitations set forth in Part 2 of Article 19 of Chapter 160A of the General Statutes.

Any rules adopted pursuant to this section may apply to part or all of the Camp Butner reservation.

"**§ 122C-404. Community of Butner Planning Commission.–**(a) There is established the Community of Butner Planning Commission.

(b) The Community of Butner Planning Commission shall consist of seven members, three appointed by the Secretary and four appointed by the Board of

Commissioners of Granville County. All members shall reside within the Camp Butner reservation.

(c) The initial appointments shall be made for terms to begin January 1, 1986. Of the initial members, one appointment of the Secretary and one appointment of the Board of Commissioners of Granville County shall be for one-year terms, one appointment of the Secretary and one appointment of the Board of Commissioners of Granville County shall be for two-year terms, and one appointment of the Secretary and two appointments of the Board of Commissioners of Granville County shall be for three-year terms. Upon expiration, all succeeding terms shall be for three years.

(c1) The Community of Butner Planning Commission shall hold an annual public meeting for receiving public nominations to be forwarded to the Board of County Commissioners of Granville County and to the Secretary for their consideration for appointment to the Community of Butner Planning Commission.

(c2) Members of the Community of Butner Planning Commission may be removed for cause by the appointing authority.

(d) Members shall receive reimbursement for travel, per diem, and subsistence in accordance with Chapter 138 of the General Statutes. Expenses of the Community of Butner Planning Commission under this subsection shall be paid by the Department.

(e) The Community of Butner Planning Commission shall elect a chairman and a vice-chairman from its membership for a one-year term, and shall elect a clerk for a one-year term.

(f) The initial meeting of the Community of Butner Planning Commission shall be called by the Secretary. The Commission shall establish a regular meeting schedule that provides for meetings at least quarterly. Special meetings may be called by the Secretary, the chairman, or on the written request of two members.

(g) The Community of Butner Planning Commission shall adopt rules for its procedures.

(h) Prior to the adoption of any ordinance or rule under this section that will apply to the territory of Camp Butner reservation other than the grounds of State facilities or State institutions, the Secretary shall consult with the Community of Butner Planning Commission.

(i) In addition to the duties prescribed by this section, the Secretary may assign other duties to the Community of Butner Planning Commission that relate to the Community of Butner or the Camp Butner reservation.

"**§ 122C-405. Recordation of ordinances and rules; printing and distribution.–**All ordinances and rules adopted under this Part shall be filed and made available in accordance with Chapter 150A of the General Statutes.

"**§ 122C-406. Violations made misdemeanor.–**A person who violates an ordinance or rule adopted under this Part is guilty of a misdemeanor and is punishable by a fine, not to exceed fifty dollars ($50.00), and imprisonment, not to exceed 30 days.

"**§ 122C-407. Water and sewer system.–**(a) The Department may acquire, construct, establish, enlarge, maintain, operate, and contract for the operation of a water supply and distribution system and a sewage collection and disposal system for the Camp Butner reservation.

(b) These water and sewer systems may be operated for the benefit of persons and property within the Camp Butner reservation and areas outside the reservation within reasonable limitations specifically including any sanitary district or city in Durham or Granville Counties.

(c) The Secretary may fix and enforce water and sewer rates and charges in accordance with G.S. 160A-314 as if it were a city.

"**§ 122C-408. Butner Public Safety Division of the Department of Crime Control and Public Safety; jurisdiction; fire and police district.–**(a)The Secretary of Crime Control and Public Safety may employ special police officers for the territory of the Camp Butner reservation. The territorial jurisdiction of these special police officers shall include: (i) the Camp Butner reservation; (ii) the Lyons Station Sanitary District; and (iii) that part of Granville County adjoining the Butner reservation and the Lyons Station Sanitary District situated north and west of the intersection of Rural Paved Roads 1103 and 1106 and bounded by those roads and the boundaries of the reservation and the sanitary district. The Secretary of Crime Control and Public Safety may organize these special police officers into a public safety department for that territory and may establish it as a division within that principal department as permitted by Chapter 143B of the General Statutes.

(b) After taking the oath of office required for law enforcement officers, the special police officers authorized by this section shall have the authority of deputy sheriffs of Durham and Granville Counties in those counties respectively. Within the territorial jurisdiction stated in subsection (a) of this section, the special police officers have the primary responsibility to enforce the laws of North Carolina and any ordinance or regulation applicable to that territory adopted under authority of this Part or under G.S. 143-116.6 or G.S. 143- 116.7 or under the authority granted any other agency of the State and also have the powers set forth for firemen in Articles 3, 5 and 6 of Chapter 69 of the General Statutes. Any civil or criminal process to be served on any individual confined at any State facility within the territorial jurisdiction described in subsection (a) of this section shall be forwarded by the sheriff of the county in which the process originated to the Director of the Butner Public Safety Division. Special police officers authorized by this section shall be assigned to transport any individual transferred to or from any State facility within the territorial jurisdiction described in subdivision (a) of this section to or from the psychiatric service of North Carolina Memorial Hospital.

"**§ 122C-409. Community of Butner comprehensive emergency management plan.–** The Department of Crime Control and Public Safety shall establish an emergency management agency as defined in G.S. 166A-4(2) for the Community of Butner and the Camp Butner reservation.

"Part 2. Black Mountain Joint Security Force.

"**§ 122C-421. Joint security force.–**The Secretary may designate one or more special police officers who shall make up a joint security force to enforce the law of North Carolina and any ordinance or regulation adopted pursuant to G.S. 143-116.6 or G.S. 143-116.7 or pursuant to the authority granted the Department by any other law on the territory of the Black Mountain Center, the Alcohol Rehabilitation Center, and the Juvenile Evaluation Center, all in Buncombe County. These special police officers have

the same powers as peace officers now vested in sheriffs within the territory embraced by the named centers.

"Part 3. North Carolina Alcoholism Research Authority.

"**§ 122C-431. North Carolina Alcoholism Research Authority created.–**(a) The North Carolina Alcoholism Research Authority is created and shall consist of and be governed by a nine-member board to be appointed by the Governor. Three of the members shall be appointed for a two-year term, three shall be appointed for a four-year term and three shall be appointed for a six-year term; thereafter all appointments shall be for terms of six years. Any vacancy occurring in the membership of the board shall be filled by the Governor for the unexpired term.

(b) The board shall elect one of its members as chairman and one as vice-chairman. The director of the Center for Alcohol Studies of The University of North Carolina at Chapel Hill shall serve ex officio as executive secretary to the Authority. Board members shall receive the same per diem, subsistence, and travel allowances as members of similar State boards and commissions, provided funds are available in the 'Alcoholism Research Fund' for this purpose.

"**§ 122C-432. Authorized to receive and spend funds.–**The Authority may receive funds from State, federal, private, or other sources. These funds shall be held separately and designated as the 'Alcoholism Research Fund'. The Authority shall spend the Fund on research as to the causes and effects of alcohol abuse and alcoholism and for the training of alcohol research personnel. Expenditures for the purposes specified in this section shall be made as grants to nonprofit corporations, organizations, agencies, or institutions engaging in such research or training. The Authority may also pay necessary administrative expenses from the Fund.

"**§ 122C-433. Applications for grants; promulgation of rules.–** (a) Applications for grants are processed by the Center for Alcohol Studies. All applications shall be reviewed by scientific consultants to the Center; and the Center, after review and study, shall make recommendations to the Authority as to the awarding of grants. The Center shall also furnish to the Authority clerical assistance as may be required.

(b) The Authority shall adopt rules relative to applications for grants, the reviewing of grants and awarding of grants."

Sec. 3. G.S. 7A-451(a)(6) is amended by deleting "to a treatment facility under Article 5A of Chapter 122", and substituting "to a facility under Part 7 of Article 5 of Chapter 122C of the General Statutes, or a proceeding for commitment under Part 8 of Article 5 of Chapter 122C of the General Statutes".

Sec. 4. G.S. 7A-451.1 is amended by deleting "G.S. 122- 58.7A", and substituting "G.S. 122C-267(d)".

Sec. 5. G.S. 7A-647(3) is amended by deleting "or local mental health director", both places those words appear.

Sec. 6. The first sentence of G.S. 14-446 is amended by deleting "an alcoholic in need of care as defined in G.S. 122- 58.22 or G.S. 122-58.23", and substituting "a substance abuser and dangerous to himself or others as provided in G.S. 122C-281."

Sec. 7. G.S. 14-447 is amended by deleting "G.S. 122- 65.11" both places it appears and substituting in both places "G.S. 122C-301".

Sec. 8. G.S. 15-155.2(c) is repealed. Sec. 9. G.S. 15A-1002(b)(2) is amended by deleting "superintendent", and substituting "director", and is further amended by deleting "Chapter 122", and substituting "Chapter 122C".

Sec. 10. G.S. 15A-1003(a) and G.S. 15A-1321 are amended:

(1) by deleting "Article 5A of Chapter 122" each time it appears and substituting "Part 7 of Article 5 of Chapter 122C";

(2) by deleting "a community or regional mental health facility pursuant to G.S. 122-58.4(b)", both places it appears and substituting, "a 24-hour facility as described in G.S. 122C- 252;" and (3) by deleting "G.S. 122-58.3 or G.S. 122-58.18", in both places it appears and substituting "G.S. 122C-261 or G.S. 122C-262".

Sec. 11. G.S. 15A-1004(d) is amended by deleting "Chapter 122 of the General Statutes, Article 5A (Involuntary Commitment)", and substituting "Part 7 of Article 5 of Chapter 122C of the General Statutes".

Sec. 12. G.S. 15A-1322 is amended by deleting "G.S. 122-36", and substituting "G.S. 122C-3", and is further amended by deleting the word "imminently".

Sec. 13. G.S. 33-1 is amended in the second sentence by deleting "is declared incompetent in connection with his commitment to a mental hospital or".

Sec. 14. G.S. 34-16 is repealed. Sec. 15. G.S. 35-1 is amended by deleting "inquisition", and substituting "incompetency hearing".

Sec. 16. G.S. 35-1.1 is amended by deleting "during his developmental period", and substituting, "before age 22".

Sec. 17. G.S. 35-1.7(4) is amended by adding a new sentence at the end to read: "Any individual permitted to be a guardian under G.S. 122C-122 is a disinterested public agent if he has no immediate responsibilities for providing services to a ward."

Sec. 18. G.S. 35-1.7(17) is rewritten to read:

"(17) 'Mental health professional' means any individual with appropriate training or experience in the field of mental health care of the mentally ill, including physicians, practicing psychologists, psychological associates, social workers, and registered nurses as specified by the Commission for Mental Health, Mental Retardation, and Substance Abuse Services."

Sec. 19. G.S. 35-1.7(18) is rewritten to read:

"(18) 'Mental retardation professional' means any individual with appropriate training or experience in the field of care for the mentally retarded, including practicing psychologists, psychological associates, physicians, educators, social workers, and registered nurses as specified by the Commission for Mental Health, Mental Retardation, and Substance Abuse Services."

Sec. 20. G.S. 35-1.7(23) is amended by deleting "G.S. 122-36(g) and G.S. 122-56.2(b)", and substituting "G.S. 122C-3".

Sec. 21. G.S. 35-1.7(31) is amended by deleting "during the developmental period", and substituting "before age 22".

Sec. 22. G.S. 35-1.34(a) is amended by deleting "residential hospitals for the mentally ill as established and provided for by Article 1 of Chapter 122 or residential centers for the mentally retarded as established and provided for by Article 9 of Chapter 122", and substituting, "State facilities for the mentally ill or mentally retarded as established by G.S. 122C-181".

Sec. 23. G.S. 35-4.1 is repealed. Sec. 24. G.S. 35-4.2 is repealed. Sec. 25. G.S. 35-5 is repealed. Sec. 26. G.S. 47-15 is repealed. Sec. 27. G.S. 51-12 is repealed. Sec. 28. G.S. 66-58(c)(7) is amended by deleting "patients" both places it appears and substituting "clients", and is further amended by deleting "institutions for the care of the blind, or mentally or physically defective", and substituting "facilities operated by the Department of Human Resources".

Sec. 29. G.S. 59-62(a)(1) is amended by deleting "declared a lunatic in any judicial proceeding", and substituting "adjudicated incompetent".

Sec. 30. G.S. 90-21.4 is amended by deleting in all three places it appears the words "or person standing in loco parentis", and substituting in each place "person standing in loco parentis, or a legal custodian other than a parent when granted specific authority in a custody order to consent to medical or psychiatric treatment".

Sec. 31. G.S. 90-21.5(a) is amended by deleting "G.S. 130-81", and substituting "G.S. 130A-135", and is further amended by deleting "G.S. 122-56.5", and substituting "G.S. 122C-222".

Sec. 32. G.S. 90-109 is amended by deleting "G.S. 122- 23.2", and substituting "G.S. 122C-3(14)b.", and by deleting in both places "Article 1A of Chapter 122", and substituting in each place "Article 2 of Chapter 122C".

Sec. 33. G.S. 105A-2(1)j. is amended by deleting "Broughton Hospital, Cherry Hospital, Dorothea Dix Hospital, John Umstead Hospital, Caswell Center at Kinston, Murdoch School, O'Berry School, Western Carolina Center, Black Mountain Alcoholic Rehabilitation Center, Butner Alcoholic Rehabilitation Center, Walter B. Jones Alcoholic Rehabilitation Center", and substituting "State facilities as listed in G.S. 122C-181(a)".

Sec. 34. G.S. 108A-101(m) is amended by deleting "G.S. 122-36(n)" and substituting "G.S. 122C-3(15)".

Sec. 35. G.S. 108A-103(b) is amended by deleting "mental health clinics" and substituting "area mental health, mental retardation, and substance abuse authorities".

Sec. 36. G.S. 110-86(3) is amended by inserting immediately after the words "schools conducted during vacation periods;" the words "facilities licensed under Article 2 of Chapter 122C of the General Statutes;".

Sec. 37. G.S. 120-123(24) is amended by deleting "G.S. 122-120", and substituting "G.S. 122C-431".

Sec. 38. G.S. 126-5(a) is amended by inserting immediately after the words "not herein exempt," the phrase "to employees of area mental health, mental retardation, and substance abuse authorities,", and is further amended by deleting the phrase", mental health clinics".

Sec. 39. G.S. 131D-10.4(4) is amended by deleting "Treatment programs" and substituting "Licensable facilities", and is further amended by deleting "Article 1A of Chapter 122", and substituting "Article 2 of Chapter 122C".

Sec. 40. G.S. 131E-66 is repealed. Sec. 41. G.S. 131E-76(3) is amended by deleting "G.S.
122-72", and substituting "Article 2 of Chapter 122C of the General Statutes".

Sec. 42. G.S. 131E-176 (14a) and G.S. 131E-176(21) are each amended by deleting "Chapter 122" and substituting "Article 2 of Chapter 122C".

Sec. 43. (a) G.S. 131E-176(5a), G.S. 58-251.8(d), G.S.
57-7.3(d), G.S. 57B-12.1(d), and G.S. 135-40.7A(c) are amended by deleting the words "Article 1A of General Statutes Chapter 122", and substituting "Article 1A of General Statutes Chapter 122 or Article 2 of General Statutes Chapter 122C".

(b) Effective January 1, 1988, G.S. 131E-176(5a), G.S.
58-251.8(d), G.S. 57-7.3(d), G.S. 57B-12.1(d), and G.S. 135- 40.7A(c) are amended by deleting the words "Article 1A of General Statutes Chapter 122".

Sec. 44. G.S. 143-475.1 is repealed. Sec. 45. G.S. 143B-13(b)(ii) is amended by deleting "insanity", and substituting "incompetence".

Sec. 46. G.S. 143B-13(b)(x) is amended by deleting "to a hospital or sanitarium by a court of competent jurisdiction as a drug addict, a dipsomaniac, an inebriate, or a stimulant addict", and substituting "as a substance abuser under Part 8 of Article 5 of Chapter 122C of the General Statutes".

Sec. 47. G.S. 143B-147(a) is amended by deleting the phrase "and regulations", the first four times it appears.

Sec. 48. G.S. 143B-147(a)(1) is amended by deleting "establish standards and promulgate", and substituting "adopt".

Sec. 49. G.S. 143B-147(a)(1)a. is rewritten to read "Admission, including the designation of regions, treatment, and professional care of individuals admitted to any State facility as defined in G.S. 122C-3, that is now or may be established."

Sec. 50. G.S. 143B-147(a)(1)b. and c. are each amended by deleting "Article 2F of Chapter 122", and substituting "Part 4 of Article 4 of Chapter 122C".

Sec. 51. G.S. 143B-147(a)(2) is amended by deleting "inspection, registration and", and is further amended by deleting "Article 1A of Chapter 122", and substituting "Article 2 of Chapter 122C".

Sec. 52. G.S. 143B-147(a)(5) is rewritten to read: "To adopt rules relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances as provided by G.S. 90-100."

Sec. 53. G.S. 143B-147(a) is further amended by adding new subdivisions to read:

"(6) Except where rule making authority is assigned under that Article to the Secretary of Human Resources, to adopt rules to implement Article 3 of Chapter 122C of the General Statutes.

(7) To adopt rules specifying procedures for waiver of rules adopted by the Commission."

Sec. 54. G.S. 143B-147(b) and (d) are each amended by deleting "and regulations".

Sec. 55. G.S. 148-22(b) is amended by inserting immediately after the words "mental health,", the words "mental retardation, substance abuse,".

Sec. 55.1. G.S. 148-19(d) is amended by inserting immediately after the words "mental health,", the words "mental retardation, and substance abuse,".

Sec. 56. G.S. 153A-77 is amended as follows:

(1) by deleting "is hereby authorized to", and substituting "may";

(2) by deleting "board of mental health (area)", and substituting "area mental health, mental retardation, and substance abuse board";

(3) by deleting "It is provided, however, that the board", and substituting "The board"; and (4) by deleting "is further authorized and empowered, in the exercise of its discretion, to", and substituting "may also".

Sec. 57. G.S. 153A-149(c)(22) is amended by deleting "county or area mental health department", and substituting "area mental health, mental retardation, and substance abuse authority".

Sec. 58. G.S. 153A-247 is amended by deleting "Chapter 130", and substituting "Chapter 130A of the General Statutes", and is further amended by deleting "programs pursuant to Chapter 122", and substituting "mental retardation, and substance abuse programs pursuant to Chapter 122C of the General Statutes".

Sec. 59. G.S. 153A-249 is amended by deleting "Chapter 131", and substituting "Chapters 122C, 131 and 131E of the General Statutes".

Sec. 60. G.S. 163-85(c)(6) is repealed. Sec. 61. G.S. 168-9 is amended by deleting "Chapter 122", and substituting "Chapter 122C".

Sec. 62. G.S. 168-21 is amended by deleting "G.S. 122- 58.2(1)b., and substituting "G.S. 122C-3(11)b.".

Sec. 63. (a) Terms used in this section have the same meaning as in Chapter 122C of the General Statutes.

(b) G.S. 122C-65 and G.S. 122C-66 apply only to acts or omissions occurring on or after January 1, 1986.

(c) Where any right enumerated in G.S. 122-55.2(b) or G.S. 122-55.14(b) has been restricted under G.S. 122-55.2(d) or G.S. 122-55.14(c), and the period of restriction had not expired before January 1, 1986, then such limitation shall, unless otherwise terminated, remain effective for the shorter of:

(1) the period for which it was stated to be effective; or

(2) seven days after December 31, 1985.

(d) Because this act becomes effective at the middle of a fiscal year, the Secretary may adopt rules to implement G.S. 122C-147 for fiscal year 1985-86 to cover the transition between G.S. 122-35.53 and G.S. 122C-147.

(e) Respondents committed to a facility for a specific period of time before the effective date of Article 5 of Chapter 122C of the General Statutes are deemed to have been committed for the same period of time under that Article.

(f) If any appeal under G.S. 122-35.41, G.S. 122-35.50, or G.S. 122-35.52 is pending on the effective date of this act, it shall be governed by the law and rules in effect at the time of the appeal. If any appeal was allowable under one of those sections, but was not taken before the effective date of this act, it shall be governed by G.S. 122C-145.

(g) Any person serving as a guardian under the authority of former G.S. 122-24.1 shall continue to serve as guardian notwithstanding the repeal of that section.

(h) G.S. 122C-254(a) through (c) applies to persons alleged to have committed crimes on or after October 1, 1981.

(i) Parts 2 through 4 of Article 5 of Chapter 122C of the General Statutes shall apply to all new admissions of voluntary clients to facilities for the mentally ill and substance abusers occurring on or after the effective date of this act. In addition, G.S. 122C-212 and G.S. 122C-224 shall apply to all voluntary clients discharged from such a facility on or after the effective date of this act.

(j) The admission of individuals residing in facilities for individuals with mental retardation on the effective date of this act shall be reviewed by the facility within two years subsequent to the effective date to assure that the admission conforms to the provisions of G.S. 122C-241.

(k) Substance abusers committed as outpatients pursuant to G.S. 122-58.7A:1 or G.S. 122-58.8 prior to the effective date of this act shall not be subject to the provisions of G.S. 122C- 290 through G.S. 122C-293. If appropriate, new involuntary commitment proceedings may be instituted regarding such individuals pursuant to G.S. 122C-281 through G.S. 122C-289.

(l) Until any change is made in the size of an area board under G.S. 122C-118(a), it shall remain the same size as on December 31, 1985.

(m) The Planning Advisory Committee for the Town of Butner shall hold a public meeting in 1985 for receiving public nominations to be forwarded to the County Commissioners and Secretary for their consideration in making initial appointments to the Community of Butner Planning Commission under G.S. 122C- 404.

(n) Any ordinance, rule, or regulation made under G.S.

122-95 and in effect on December 31, 1985, shall continue in effect until amended, modified, or repealed by the Secretary of Human Resources under G.S. 122C-403.

(o) The Department of Human Resources shall prepare a report regarding alternative procedures to G.S. 122C-57(e) designed to better protect the involuntary client's right to consent or refuse specific treatment measures. Included in this report shall be an assessment of the feasibility of appointing a guardian ad litem or a guardian for a respondent while he is held involuntarily in a 24-hour facility. If the 1985 General Assembly Adjournment Resolution allows a report from the Mental Health Study Commission during the 1986 Short Session, then the Department's report shall be made to the Mental Health Study Commission by March 1, 1986. If not, then the Department's report shall be made to the Mental Health Study Commission no later than September 1, 1986.

Sec. 64. Prosecutions for offenses occurring before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

Sec. 65. The provisions of this act are severable, and if any provision of this act is held invalid by a court of competent jurisdiction, the invalidity shall not affect other provisions of this act which can be given effect without the invalid provision.

Sec. 66. This act shall become effective January 1, 1986, except that Section 63(m) of this act is effective upon ratification. Notwithstanding the previous sentence, rules to implement this act which are authorized to be adopted by this act or which are otherwise authorized to be adopted by law may be adopted at any time after ratification of this act, but shall not become effective before January 1, 1986.

In the General Assembly read three times and ratified, this the 4th day of July, 1985.