

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 775

Short Title: Willie M. Changes/AB.

(Public)

Sponsors: Senators Allran, Conder, Gulley, Lucas, Warren, and Cochrane.

Referred to: Children and Human Resources

April 20, 1995

A BILL TO BE ENTITLED

AN ACT TO DEFINE CLIENTS ELIGIBLE FOR "WILLIE M." SERVICES, TO AUTHORIZE THE ADOPTION OF RULES TO DETERMINE ELIGIBILITY, TO ENSURE THE PROVISION OF SERVICES, AND TO PROVIDE FOR CONTESTED CASE HEARING PROVISION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 122C-3 is amended by redesignating existing subdivision (13a) as subdivision (13a1) and by inserting before it a new subdivision (13a) to read:

"(13a) 'Eligible assaultive and violent children', previously identified as Willie M. class members pursuant to Willie M. et al, vs. Hunt, et al. (C-C-79-294, Western District), means children who are citizens of North Carolina and:

a. Who suffer from emotional, mental, or neurological handicaps that have been accompanied by behavior that is characterized as violent or assaultive; and

b. Who are involuntarily institutionalized or otherwise placed in residential programs, including:

1. Minors who are mentally ill as defined by G.S. 122C-3(21) and who are admitted for evaluation or treatment to a treatment facility under Article 5 of

Chapter 122C of the General Statutes or are presented for admission and denied due to their behaviors or handicapping conditions;

2. Minors who are referred to an area mental health, developmental disabilities, and substance abuse authority pursuant to G.S. 7A-647(3) for whom residential treatment or placement is recommended;
3. Minors who are placed in residential programs as a condition of probation pursuant to G.S. 7A-649(8);
4. Minors who are ordered to a professional residential treatment program pursuant to G.S. 7A-649(6); and
5. Minors committed to the custody of the Division of Youth Services pursuant to G.S. 7A-649(10); and

c. For whom the State has not provided appropriate treatment and educational programs."

Sec. 2. G.S. 122C-112(a) is amended by adding a new subdivision to read:

"(14) Adopt rules to be followed in the determination of eligibility for, and to ensure the provision of services for, eligible assaultive and violent children as defined in G.S. 122C-3(13a)."

Sec. 3. Article 4 of Chapter 122C of the General Statutes is amended by adding a new Part to read:

"PART 7. CONTESTED CASE HEARINGS FOR ELIGIBLE ASSAULTIVE AND VIOLENT CHILDREN.

"§ 122C-194. Declaration of policy.

It is the State's policy to provide procedures for the contested case hearing for an eligible assaultive and violent child, previously identified as a Willie M. class member pursuant to Willie M. et al., vs. Hunt, et al. (C-C-79-294, Western District), the child's parent, advocate or legal guardian; and when appealing a decision of ineligibility for services for assaultive and violent children. The provisions stipulated in this process do not limit nor supersede rights granted under other relevant State or federal law.

"§ 122C-195. Scope and effect.

(a) The parent, guardian, or advocate may obtain review of proposed decisions on the following grounds:

- (1) The child has not been identified and evaluated or has been incorrectly identified and evaluated;
- (2) The child's Individual Habilitation Plan (I.H.P.), services, or placement are not appropriate to meet the child's needs;
- (3) The plan is not being implemented; or
- (4) The services provided are other than those specified in the service plan, are not provided with sufficient intensity or continuity to meet the child's needs, or have not been initiated or provided in a timely, regular, or competent manner.

1 (b) A local or State agency may obtain review as provided by this section if a
2 parent, guardian, or advocate refuses to consent to the evaluation of the child.

3 (c) Except as otherwise provided in this section, the administrative review shall be
4 initiated and conducted in accordance with Article 3 of Chapter 150B of the General
5 Statutes, the Administrative Procedures Act. The hearing shall be closed to the public
6 unless the parent, guardian, or advocate requests in writing that the hearing be open to the
7 public.

8 **"§ 122C-196. Prior notice.**

9 (a) Written notice shall be given to the parent, guardian, or advocate of an eligible
10 assaultive and violent child, within a reasonable time before the local or State agency:

11 (1) Proposes to initiate or change the identification/eligibility,
12 evaluation/assessment, I.H.P., treatment provisions, services, or
13 placement of the child; or

14 (2) Refuses to initiate or change the identification/eligibility,
15 evaluation/assessment, I.H.P., treatment provisions, services, or
16 placement requested by the parent, guardian, or advocate on behalf of a
17 child.

18 (b) The specific form and content of the notice shall be governed by rules adopted
19 by the Secretary but shall include:

20 (1) A full explanation of all procedural safeguards including the right to
21 mediation, impartial contested case hearing rights (administrative
22 review), the opportunity to examine records, an independent evaluation,
23 confidentiality, and the right to be represented by counsel; and

24 (2) A description of the action proposed or refused by the local or State
25 agency, an explanation of why the agency proposed or refused to take
26 the action, and a description of any options the agency considered and
27 the reasons why those options were rejected.

28 (c) The local or State agency shall document that the notice has been sent to and
29 received by the parent, guardian, or advocate.

30 **"§ 122C-197. Mediation.**

31 (a) Prior to the filing of a petition for contested case review, mediation of disputes
32 is voluntary but encouraged.

33 (b) When such a request for mediation has been made by the parent, guardian, or
34 advocate, the director of the area authority or the director of the designated lead agency
35 shall meet, or designate an assistant or associate to meet, with the parent, guardian, or
36 advocate, the local interagency committee, and the regional consultant/service manager
37 for the Department of Public Instruction and Department of Human Resources to mediate
38 the dispute.

39 (c) The meeting shall be informal and nonadversarial, as required by G.S. 150B-
40 22.

41 (d) Mediation of the disagreement shall occur within 10 working days of the
42 initiation of the mediation process by the parent, guardian, or advocate. If successful
43 mediation does not occur within 10 working days, the parent, guardian, or advocate may

1 file a written petition with the Office of Administrative Hearings for a contested case
2 hearing in accordance with G.S. 150B-23.

3 **"§ 122C-198. Decision of the administrative law judge.**

4 Following the contested case hearing, the administrative law judge shall make a
5 decision regarding the issues set forth in G.S. 122C-195(a). The decision shall contain
6 findings of fact and conclusions of law. Notwithstanding the provisions of Chapter 150B
7 of the General Statutes, the decision of the administrative law judge becomes final and
8 not subject to further review unless appealed to the Review Officer as provided in G.S.
9 122C-199. A copy of the administrative law judge's decision shall be served upon each
10 party and a copy shall be furnished to the attorneys of record. The written notice shall
11 contain a statement informing the parties of the availability of appeal and the 30-day
12 limitations period for appeal, as set forth in subsection 150B.

13 **"§ 122C-199. Administrative review by Review Officer.**

14 (a) When there is an appeal by either party of the decision of the administrative
15 law judge, an impartial Review Officer for the review will be appointed by the Secretary
16 of Department of Human Resources.

17 (b) The Review Officer shall be selected from a pool of review officers who have
18 been approved, meet qualifications, and perform a review pursuant to rules adopted by
19 the Secretary for this purpose.

20 (c) If the Review Officer decides to hold a hearing to receive additional evidence,
21 all rights prescribed by Chapter 150B of the General Statutes to an administrative hearing
22 apply.

23 (d) The decision of the Review Officer shall contain findings of fact and
24 conclusions of law and becomes final unless an aggrieved party brings a civil action
25 pursuant to Article 4 of Chapter 150B of the General Statutes. A copy of the decision
26 shall be served upon each party and a copy shall be furnished to the attorneys of record.
27 The written notice shall contain a statement informing the parties of the right to file a
28 civil action and the 30-day limitations period for filing a civil action pursuant to Article 4
29 of Chapter 150B of the General Statutes.

30 (e) Any party aggrieved by the decision of the Review Officer may file a petition
31 for judicial review under Chapter 150B of the General Statutes in State court within 30
32 days after receipt of notice of the decision.

33 **"§ 122C-200. Enforcing decision.**

34 The Secretary shall implement the final decision of the administrative law judge, if
35 not appealed pursuant to G.S. 122C-199 or the final decision of the review, by ordering
36 the local or State agency:

37 (1) To make a child eligible for class membership; and/or

38 (2) To provide a child with appropriate services."

39 Sec. 4. G.S. 150B-1(e) is amended by adding a new subdivision to read:

40 "(11) Hearings that are provided by the Department of Human Resources
41 regarding the eligibility and provision of services for eligible assaultive
42 and violent children, as defined in G.S. 122C-3(13a), shall be conducted
43 pursuant to the provisions outlined in G.S. 122C, Article 4, Part 7."

1 Sec. 5. Rules adopted for Willie M. class members prior to the effective date
2 of this act remain in effect until amended or repealed by rules adopted for eligible
3 assaultive and violent children, as defined in this act.

4 Sec. 6. This act becomes effective July 1, 1995.