

## **NEW LEGISLATION AFFECTING COMMITMENTS:**

The Legislature has amended a couple of statutes which impact commitments. These amendments impact the rights of individuals involved in the involuntary commitment process before the right to counsel has attached pursuant to G.S. 122C-270(a). Both have been signed into law by the Governor. They are:

1. **First Examination by Telemedicine G.S. 122C-263(c); and,**
2. **First Examination Detention Limited to Seven Days G.S. 122C-263(d)(2).**

As you all know, the first examination is the gateway for a respondent involved in the involuntary commitment process. This examination determines whether the respondent is released from the involuntary commitment, is remanded to the community for outpatient care or is bound over to the 24 hour facility for involuntary admission.

### **First Examination by “Telemedicine” G.S. 122C-263(c)**

Insert in Manual at Ch. 2, pg. 17

According to McLean v. Sale, 54 N.C. App. 538 (1981), the first examiner is required to personally examine the respondent prior to a recommendation to commit.

N.C.G.S. 122C-263 (c): (currently effective) When the first examination is performed by a physician or eligible psychologist the respondent may be either in the physical face-to-face presence of the physician or eligible psychologist or may be examined *using telemedicine equipment and procedures*.

The examiner must be satisfied to a reasonable medical certainty that the determinations made would not be different if done face-to-face. If not so satisfied, the examiner must indicate such in writing on the first examination report (5-72). The respondent must then be transported for a face-to-face examination. This section does not expand the 24 hour limitation provided for the first examination to occur.

For purposes of this section, “telemedicine” is the use of two-way real time interactive audio and video between places of medical capability or expertise when distance separates participants who are in different geographical locations.

### **First Examination Detention Limited to Seven Days G.S. 122C-263(d)(2)**

Insert in Manual at Ch. 2, pg. 19

According to 122C-263(a), the respondent may be “temporarily detained” at the place of the first examination while waiting for transport to the 24 hour facility. Until now, temporary detention has not been defined, nor has there been a statutory remedy when this detention becomes excessive. The legislature has now added language to 122C-263 to set those standards.

**Commitments Listserv**  
**E-blast**  
**July 28, 2009**  
**Page 2**

N.C.G.S. 122C-263 (d)(2) : (effective Oct. 1, 2009) If the respondent is temporarily detained and a 24 hour facility is not available or medically appropriate *seven days after issuance of the custody order*, a physician or psychologist shall report this to the clerk and *the proceedings shall be terminated*.

Be aware that a good deal of political wrangling between Disability Rights, the School of Government and sponsors of the bill resulted in a compromise on the subject of whether the proceeding could be revived once terminated.

As a result, 122C-263(d) (2) provides that termination of the proceedings shall not avoid initiation of new involuntary commitment proceedings. However, re-petitioning the unrepresented and hapless respondent is only allowed on certain conditions that preserve a modicum of rights for respondent. A new petition is allowed only on condition that subsequent affidavits *shall* be based on a new examination of respondent and *shall not* contain any of the information relied upon in the previous filing. Bear in mind that 122C-270(a) provides counsel only for initial hearings, re-hearings and supplemental hearings. Further procedural relief for respondents at this juncture would require extraordinary measures, e.g. writ of Habeas Corpus.

Theoretically, a new filing could result in an additional seven day waiting period for bed space at the 24 hour facility. As a practice pointer, we should be making inquiry of our clients about the length of time they were held in the hospital waiting for a bed at the 24 hour facility. Violations of the statute demand dismissal. In addition, as attorney advocates we should occasionally remind our commitment clerks to notify us if first examiners are terminating then re-filing IVC papers based on this seven day rule.

Please contact me off list with any questions.

Ben Turnage  
Special Counsel  
Cherry Hospital  
201 Stevens Mill Road  
Goldsboro, NC 27530  
(919) 731-3437

Ben.M.Turnage@nccourts.org