

19 March 1975

Subject: Mental Health; Involuntary Commitment and Voluntary Admission; Patients' Rights; Meaning of the Term "Institutionalized Patient"

Requested by: Dr. Pedro Carreras  
Assistant Director  
John Umstead Hospital

Question: What patients are included within the term "institutionalized patient" as used in G.S. 122-55.6?

Conclusion: As used in G.S. 122-55.6, "institutionalized patient" means any inpatient who has been voluntarily admitted or involuntarily committed to a treatment facility in North Carolina.

The language of G.S. 122-55.6 which has caused this query is as follows:

"Each institutionalized patient shall have the right to receive appropriate treatment for mental and physical ailments and for the prevention of illness or disability. Each patient within 30 days after admission shall have an individual written treatment or habilitation plan formulated by the treatment facility's mental health or mental retardation professionals. Each patient who has been institutionalized in a State hospital shall have, as soon as practical but not later than the time of discharge, an individualized written postinstitutionalization plan setting forth a program of recommended vocational counseling or outpatient care. A copy of such plan shall be furnished to the patient or his guardian and, with the consent of the patient, to his attorney and his next of kin."

This statute is a part of the so-called "patients' rights bill" which

was ratified in 1973 in order to insure basic human rights to patients in North Carolina treatment facilities. See G.S. 122-55.1. Throughout the statutes which contain provisions pertinent to patients' rights, the terminology "patient" is consistently used, although sometimes it is modified by the usage of the term "adult" or "minor". Thus, the majority of the provisions in the patients' rights bill contemplate assuring rights to both inpatients and outpatients.

However, this particular portion now in question, by its very language, contemplates an in-patient situation and must be so limited in interpretation. In passing, it should be noted that G.S. 122-55.5 also includes entitlement to each patient of "an individualized treatment or habilitation plan"; this provision is clearly applicable to all patients.

In the newly developing juridical area dealing with a "constitutional" right to treatment, some authorities distinguish between the right to treatment of a patient involuntarily committed *vis-a-vis* one voluntarily admitted. The present question does not require delving into that area of the law. What we are concerned with here is the extent of a *statutory* right granted by the General Assembly. The language utilized throughout the entire patients' rights bill clearly indicates that the rights specified were intended for both the voluntary and involuntary patients.

Rufus L. Edmisten, Attorney General  
William F. O'Connell  
Assistant Attorney General

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27 March 1975

Subject: Parole; Parole Commission; Bond

Requested by: Mr. James E. Cline  
Parole Commissioner

Question: May a parolee who is in custody by virtue of a warrant issued by the Parole

Commission pursuant to G.S. 148-61.1 be released on bond?

Conclusion: No.

The law governing release of an individual on bond is found in Chapter 15, Article 10 of the General Statutes. In essence, the statutes define bond as a procedure for effecting the release of an accused while he awaits his trial or the results of an appeal.

"Any justice or judge of the General Court of Justice has power to fix and take bail for persons committed to prison *charged with crime* in all cases..." G.S. 15-103 (Emphasis added).

This Article will be superseded on July 1, 1975, by the new Criminal Procedure Act, G.S. 15A-531 through 15A-544. Like the present law, however, the revision provides for release of only those persons awaiting trial, G.S. 15A-533, - 534, and -535, and those who are "either awaiting sentence or (who have) filed an appeal..." G.S. 15A-536.

There is also specific statutory authority allowing the release on bond of persons arrested for violating their probation, G.S. 15-200. However, there is no statutory provision allowing bail for alleged parole violators, or for any other category of offenders. On the contrary, the applicable statute indicates that bond should not be granted to parole violators. G.S. 148-61.1(b) provides that:

"The Parole Commission may, in its discretion, enter an order revoking a parole conditionally or for a temporary period of time. Upon issuing such order of conditional or temporary revocation, such parolee may be arrested without warrant by any peace officer or parole officer. After such conditional or temporary revocation of parole, the *parolee shall be held for a reasonable length of time* during which the Parole Commission shall determine whether or not the conditions of said parole have been violated...." (Emphasis added).

Clearly, the words "shall be held" do not allow for the issuance of bail. Therefore, it is our opinion that a parolee arrested by virtue of a warrant issued by the Parole Commission pursuant to G.S. 148-61.1 may not be released on bond.

Denial of bail does not violate the parolee's rights. There is no constitutional right to bail after detention for a parole violation. *People ex rel Calloway v. Skinner*, 33 N.Y. 2d 23, 347 N.Y.S. 2d 178, 300 N.E. 2d 716 (1973); *In re Whitney*, 421 F. 2d 337 (1st Cir., 1970). However, we would like to emphasize that a parolee may not be held indefinitely pending a hearing on whether the conditions of his parole have been violated. See G.S. 148-61.1(b) and *Morrissey v. Brewer*, 408 U.S. 471 (1972). He should be given a hearing as soon as reasonably practical.

Rufus L. Edmisten, Attorney General  
Alan S. Hirsch  
Associate Attorney General

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27 March 1975

Subject:

Federal Disaster Relief Act of 1974; Grants to Individuals and Families; Public Purpose; Acceptance of Advance from Federal Government

Requested by:

Mr. John J. Tolson, III, Secretary  
Department of Military and Veterans Affairs

Questions:

- (1) May the State make cash grants of 25% of the cost to meet disaster-related necessary expenses or serious needs to individuals or families adversely affected by a major disaster?
- (2) May the State accept an advance from the federal government to meet its share of the cost of the program?