

1.3 Involuntary Commitment

A. Three Types of Involuntary Commitment

There are three types of involuntary commitments for both adults and minors:

- involuntary inpatient commitment for mental health treatment;
- involuntary outpatient commitment for mental health treatment; and
- involuntary commitment for substance abuse treatment.

As these commitments by definition infringe on an individual's liberty interests involuntarily, judicial review is required. North Carolina statutes provide for representation by Special Counsel or an appointed attorney for all indigent and minor respondents, as well as non-indigent adults without counsel, on admission to a 24-hour facility. *See* G.S. 122C-270(a), (d), (e), 122C-224.1, 122C-268(d); *see also infra* §§ 2.1A and B, 2.5A, 3.4A.

B. Inpatient vs. Outpatient Commitment

Inpatient commitment requires that an individual receive therapeutic treatment from qualified professionals within the confines of a 24-hour facility. Outpatient commitment allows the individual to be treated in the community by a local treatment provider. A crucial component of outpatient commitment is that the respondent is *ordered* to attend appointments during the term of commitment. The appointment of counsel on a request for outpatient commitment is in the discretion of the court.

An examining physician or eligible psychologist may recommend inpatient or outpatient commitment at any step in the involuntary commitment process. Either type of commitment can be ordered by a court regardless of the physician's or eligible psychologist's request. After admission, the treating physician may evaluate whether the respondent continues to meet the criteria for commitment. At any time during the process, if the respondent does not meet criteria for commitment, he or she must be discharged by his or her physician unless committed as incapable of proceeding on a violent crime.

The appearance of the respondent may not be waived at a hearing initiated on the basis of an outpatient commitment request. If the court orders inpatient commitment for a respondent under outpatient commitment, the outpatient commitment is terminated. As the state continues to shift patients from an inpatient setting to outpatient treatment, there may be an increase in the number of commitments that begin solely as outpatient commitment requests.

For a further discussion of inpatient and outpatient commitment, see *infra* Chapter 2.

C. Maximum Periods of Mental Health Commitment

On the initial petition, the statute allows a respondent to be committed as an inpatient for a maximum of ninety days. At the expiration of an initial ninety-day commitment, the physician may request a first rehearing where the court may order up to 180 days of inpatient or outpatient commitment. The court may order up to 365 days of commitment on any subsequent request for inpatient treatment. On a second or subsequent request for rehearing on an outpatient commitment, the court may order a maximum of only 180 days.

The court also may order “split commitment,” which is a combination of inpatient and outpatient commitment, within the statutory time limits (e.g., a 30/60 split commitment). The “split commitment” is typically ordered on an initial commitment. During a “split commitment,” the treating physician may find that additional inpatient treatment is necessary. On the physician’s request for rehearing, the court may order inpatient commitment or outpatient commitment for “up to” 180 days.

For further discussion of maximum periods of mental health commitment, see *infra* §§ 2.7, 2.9D.

D. Substance Abuse Commitment

A substance abuse commitment provides for treatment on either an inpatient or outpatient basis throughout the term of commitment. The use or abuse of the substance must be in a way or to a degree so as to impair the user’s personal, social, or occupational functioning. The appearance of the respondent is not waivable at a substance abuse commitment hearing; however, the court’s subpoena power may be necessary to compel the respondent’s appearance at the hearing.

Initially the term of commitment may be up to 180 days. The respondent is committed to the treatment of an area authority or physician rather than to a 24-hour facility. The area authority or treating physician then evaluates whether the individual will be treated on an inpatient or outpatient basis. At the forty-five day review, the court may order additional inpatient services up to a maximum of ninety days. At each review, the court may order outpatient services during the remainder of the commitment period or discharge the respondent from further commitment. On a physician’s request for rehearing at the expiration of the initial 180-day commitment, the court may order a maximum of an additional 365-day recommitment.

For a further discussion of substance abuse commitment, see *infra* Chapter 3.

E. Substance Abuse vs. Mental Health Commitment

Involuntary commitment for treatment of mental illness has been the traditional mode of treatment in a 24-hour facility. The person is committed for a period of inpatient treatment with the maximum term being set by statute. The treating physician may

discharge the individual at any time during the commitment if the criteria for inpatient treatment are no longer met. With the increasing need for substance abuse treatment, it became clear that traditional mental health commitment did not best meet the needs of some clients. The General Assembly therefore amended the statutes to provide a discrete procedure for substance abuse commitment. There are two primary differences from a mental health commitment:

- the initial maximum term of a substance abuse commitment can be longer, up to 180 days versus 90 days for mental health treatment; and
- the responsible professional determines within that term how much of the treatment will be on an inpatient basis in a 24-hour facility and what portion will be on an outpatient basis.

Although a petition may initially request treatment for substance abuse, the final court order may be for mental health treatment, or vice versa. This is not a statutory provision, but rather a result of negotiation between the parties with approval by the court. For example, the parties may agree to convert a substance abuse commitment to a mental health commitment because loss of driving privileges may result from a substance abuse commitment. *See infra* §§ 3.6C, 12.4.