

## 2.1 Overview of Involuntary Commitment Process

### A. Right to Counsel

Involuntary commitment is the judicial procedure for compelling people to receive mental health treatment, either on an inpatient or outpatient basis. In the majority of proceedings for involuntary commitment, respondents are represented by appointed attorneys. Counsel is appointed because the process represents a significant infringement on a respondent's liberty interest. In addition, the process restricts a respondent's freedom of movement, making it potentially difficult for an otherwise financially capable respondent to make appropriate contacts for the purpose of hiring counsel.

In inpatient proceedings, Special Counsel or an appointed attorney represents all respondents who have not arranged for private representation. They represent respondents at private hospitals, state psychiatric hospitals, and treatment centers throughout the state. Section 122C-270(a) of the North Carolina General Statutes (hereinafter G.S.) provides that Special Counsel represents "all indigent respondents at all hearings, rehearings, and supplemental hearings" held at state facilities. *See also infra* § 2.5A.

A respondent has the right to counsel through all stages of the proceedings for involuntary inpatient commitment. On appeal from a district court involuntary commitment order, counsel is assigned by the Office of the Appellate Defender.

Generally, in involuntary inpatient proceedings, counsel is appointed after the respondent's second evaluation. It is after the second evaluation that the respondent is admitted to the facility, thereby establishing venue of the district court hearing according to the location of the inpatient facility. Appointment after the second evaluation and admission to a 24-hour facility has been the most feasible time after custody for effectuating the right to counsel established in G.S. 7A-451(b) for commitment proceedings, but delays may occur, as discussed below.

Appointment of counsel for indigent respondents in outpatient commitment proceedings is discretionary with the court. Respondents who are not indigent have the right to hire private counsel for outpatient commitment proceedings.

### B. Possible Delays in Appointment of Counsel

A potential deviation from the general practice of appointment of counsel for inpatient commitment proceedings may be caused by G.S. 122C-263(d)(2). This statute allows the first evaluator to detain a respondent up to seven days after the issuance of a custody order if a 24-hour facility is not immediately available or appropriate to the respondent's medical condition. If detention is to extend beyond the seventh day, the evaluator must notify the clerk to terminate the proceedings. If deemed necessary, the evaluator can begin the commitment process with a new petition and affidavit and new allegations.

This creates a possibility of consecutive seven-day detentions, without appointment of counsel, as delays may occur in placing the respondent at a 24-hour facility. In light of this potential delay, a respondent arguably has the right to have counsel appointed upon the filing of a second petition resulting in another first evaluation rather than after a second evaluation and admission to a 24-hour facility. Appointment of counsel is determined according to rules adopted by the Office of Indigent Defense Services (IDS), but the rules currently do not address this situation. Local rules also may address the timing of appointment. For a discussion of possible responses to this situation, see *infra* § 2.3J.

### **C. Statutory Procedures**

The statutory involuntary commitment procedures apply to both adults and minors. Chapter 122C of the North Carolina General Statutes outlines the typical commitment procedures:

- initiation of the process by petition before a magistrate or the clerk of superior court;
- custody and transport of the respondent for an initial examination by a physician or eligible psychologist;
- a second examination if inpatient commitment is initially recommended by the first examiner; and
- district court review of all involuntary commitments within ten days of the date the respondent is taken into law enforcement custody.
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### **D. Responsibilities of Counsel**

Generally, counsel is assigned upon the respondent's admission to a 24-hour facility. *See supra* § 2.1A (discussing right to counsel). Upon receiving a case, the attorney should review all court documents for compliance with the statutory requirements discussed in this chapter. A meeting with the client is most important in preparing the case, with follow-up meetings as necessary. The attorney must explain the legal procedures involved, discuss the underlying facts with the client, explore dispositional alternatives (what the client might agree to, what the attending physician recommends, and what the court might order), and determine whether the client wants to contest commitment at the district court hearing. Other responsibilities of the attorney include reviewing the client's medical/psychiatric records, consultation with treatment providers, and talking with potential witnesses and opposing counsel.

### **E. Outpatient Commitment**

A court order requiring an individual to receive psychiatric treatment outside a residential facility is an outpatient commitment. An outpatient commitment may be initiated by request of a physician or eligible psychologist or may be recommended by an examiner at any point in the commitment process. Outpatient commitment also may be recommended after the individual has been admitted to a 24-hour facility. Because the possibility of outpatient commitment exists throughout the commitment process, references to

outpatient commitment, also involuntary, recur throughout this chapter. Counsel should be alert for opportunities to resolve a case by agreement to outpatient commitment, which involves less restriction of freedom and fewer collateral consequences than an inpatient commitment.

#### **F. District Court Hearing**

A district court hearing must be calendared and held within ten days of the respondent being taken into custody pursuant to a petition for involuntary commitment. An evidentiary hearing, with findings of fact and conclusions of law, is held in every case. If the respondent is not contesting, this hearing may consist only of the court reviewing the physician's affidavit by stipulation. Upon finding that the statutory criteria are met, the court may order outpatient commitment, inpatient commitment, a combination of inpatient commitment followed by outpatient commitment, or unconditional discharge of the respondent.