

## 2.7 Disposition

### A. Dispositional Alternatives: Respondent Held in 24-Hour Facility Pending Hearing

**Inpatient.** If the court finds that the respondent meets the criteria for inpatient commitment—that is, that the respondent is mentally ill and dangerous to self or others—it may order inpatient treatment in a 24-hour facility for up to ninety days. If the commitment proceeding was initiated as the result of the respondent being charged with a violent crime and found incapable of proceeding, this must be noted on the commitment order. *See infra* Chapter 8. If the respondent is currently under an outpatient commitment order, that commitment is terminated. G.S. 122C-271(b)(2).

The subsection on inpatient commitment specifically provides that “no respondent found to be both mentally retarded and mentally ill may be committed to a State, area or private facility for the mentally retarded.” G.S. 122C-271(b)(2). There are limited circumstances in which an individual with mental retardation can be committed to a state facility for the mentally ill. G.S. 122C-263(d)(2); *see also supra* § 2.3.N.

**Outpatient.** If the court finds that the respondent meets the criteria for outpatient commitment, it may order outpatient commitment for up to ninety days. G.S. 122C-271(b)(1); *see supra* § 2.6I. The court also may order that a respondent being held at a 24-hour facility pending hearing be held by the facility up to seventy-two hours to allow the facility time to notify the outpatient physician or center of the treatment needs of the respondent. G.S. 122C-271(b)(4). If the court orders outpatient commitment in excess of the initial ninety days allowed by statute, the order is voidable, not void ab initio, and must be honored until vacated or corrected. *In re Webber*, \_\_\_ N.C. App. \_\_\_, 689 S.E.2d 468 (2009). The proper remedy in such a case is for the respondent to appeal the erroneous order or request a supplemental hearing pursuant to G.S. 122C-274(e). *Webber*, 689 S.E.2d at 476. The statute requires that if the commitment petition was filed as the result of the respondent being charged with a violent crime, and the respondent was found incapable of proceeding, this must be noted on the commitment order. G.S. 122C-271(b)(1); *see also infra* § 8.10.

The court must make a specific finding of availability of services before ordering outpatient commitment. In addition, the name of the outpatient treatment physician or center responsible for the respondent’s treatment must be shown on the order. G.S. 122C-271(b)(4).

**Inpatient/outpatient.** The statute also allows the court to commit the respondent to a combination of inpatient and outpatient treatment for up to ninety days. G.S. 122C-271(b)(2). For example, the judge may order up to forty-five days of inpatient treatment, followed by up to forty-five days of outpatient treatment. The outpatient commitment begins on the respondent’s release from the inpatient facility. In this example, if the respondent is released on the thirtieth day of inpatient treatment, the forty-five days of outpatient commitment begins then.

The court may feel more comfortable with an earlier release from a facility if an outpatient commitment is ordered. Although a contesting client may object to *any* commitment, counsel may suggest to the client proposing to the court a lesser amount of recommended inpatient time followed by an outpatient commitment, or simply an outpatient commitment.

As with an inpatient order alone, the court must note on the order whether the commitment proceedings were initiated as a result of the respondent being charged with a violent crime. Likewise, any inpatient period of commitment terminates a prior outpatient commitment. G.S. 122C-271(b)(2).

**Discharge.** If the court does not find that the criteria for either inpatient or outpatient criteria are met, the respondent must be discharged. G.S. 122C-271(b)(3).

### **B. Dispositional Alternatives: Outpatient Recommendation, Respondent Released Pending Hearing**

There are only two possible dispositional alternatives when the affiant physician or eligible psychologist has recommended outpatient commitment and the respondent has been released pending hearing. The court may order an outpatient commitment of up to 90 days if the criteria for outpatient commitment are found by clear, cogent, and convincing evidence. G.S. 122C-271(a)(1). If the court does not find that the outpatient criteria are met, the respondent must be discharged. G.S. 122C-271(a)(2).

### **C. Order**

**Inpatient.** The court must find by clear, cogent, and convincing evidence that the respondent is mentally ill and dangerous to self or others. The underlying facts supporting these findings must be set out in the order. G.S. 122C-268(j); *see infra* Appendix A, Form AOC-SP-203. The trial court's duty to record facts in support of its findings is "mandatory," and failure to do so requires reversal of the order without regard to the evidence elicited at hearing. *In re Booker*, 193 N.C. App. 433 (2008).

**Outpatient.** The court must find by clear, cogent, and convincing evidence that the criteria for outpatient commitment are present. G.S. 122C-271(b)(1). The court also must make findings of fact regarding the availability of outpatient treatment and show on the order the name of the supervising outpatient physician or center. If the respondent was held in a 24-hour facility pending the hearing, the court may order that the respondent be held by the facility for up to seventy-two hours to notify the outpatient treatment provider of the respondent's treatment needs. G.S. 122C-271(b)(4). The form used for an inpatient commitment, AOC-SP-203, is also used for an outpatient commitment. *See infra* Appendix A.

### **D. Duties of Physician for Follow-Up on Inpatient Commitment Order**

**General duties.** There is only a brief statutory paragraph regarding duties for follow-up

on an inpatient commitment order. The statute directs that the attending physician “may administer to the respondent reasonable and appropriate medication and treatment that are consistent with accepted medical standards.” G.S. 122C-273(d).

**Release and conditional release.** Subject to exceptions concerning patients involved with the criminal justice system, the attending physician must discharge any respondent held pursuant to an inpatient commitment order upon determination that the criteria for inpatient treatment are no longer met. If the criteria for outpatient treatment are met, the attending physician may file a request with the clerk for a supplemental hearing on the issue of outpatient commitment. G.S. 122C-277(a).

The attending physician also may conditionally release a respondent for up to thirty days on “medically appropriate conditions.” G.S. 122C-277(a). Conditional release is used for patients who have improved but still meet the commitment criteria. Often called a “trial visit,” a conditional release affords the respondent an opportunity to demonstrate the ability to function safely in the community while still under the commitment order. The use of a trial visit has decreased recently because of concerns about hospital and physician liability for a respondent’s acts while out of the facility.

Conditions imposed on the release may include taking medicine as prescribed, attending outpatient appointments, and abstaining from dangerous behaviors. The conditional release can range from a visit of a few hours outside the hospital with family or friends, to an overnight or weekend visit home, to the full thirty-day period of conditional release to home. Successful completion of a trial visit should result in unconditional discharge.

If a conditionally released respondent violates the specified conditions, the attending physician may request a law enforcement officer to take the respondent into custody for return to the facility. G.S. 122C-277(a); *see infra* Appendix A, Forms DMH 5-82-02 and DMH 5-83-01.

Notice of discharge or conditional release is to be provided to both the clerk of court in the county where the petition for commitment was originally filed and in the county where the facility is located. G.S. 122C-277(a).

#### **E. Duties of Physician or Center for Follow-Up on Outpatient Commitment Order**

**Medication and treatment.** An outpatient physician may prescribe or administer or an outpatient center may administer “reasonable and appropriate medication and treatment that are consistent with accepted medical standards.” G.S. 122C-273(a). Note, however, the respondent may not be physically forced to take medication or be forcibly detained for treatment except in the case of immediate danger to self or others. Forced treatment or detention may only be undertaken in conjunction with the initiation of inpatient commitment proceedings. G.S. 122C-273(a)(3). There is also a mandate for LMEs that no individual may be refused services because of an inability to pay. G.S. 122C-146(a).

**Failure to comply or clearly refuses to comply.** The treating outpatient physician or

center must make “all reasonable effort [sic]” to obtain the respondent’s cooperation with treatment. G.S. 122C-273(a)(1). If the respondent “fails to comply or clearly refuses to comply” with treatment recommendations, the treatment provider *must* report the efforts made, along with a request for a supplemental hearing. *Id.*; *see infra* Appendix A, Form AOC-SP-221. The form is filed with the clerk of superior court, who is responsible for calendaring the supplemental hearing.

***Failure to comply, but does not clearly refuse to comply.*** The treatment provider must make reasonable efforts to engage the respondent in prescribed treatment. If the respondent does not comply, but does not clearly refuse prescribed treatment, the treatment provider *may* request that the respondent be taken into custody for the purpose of examination. G.S. 122C-273(a)(2); *see infra* Appendix A, Form AOC-SP-220. The form is filed with the clerk of superior court, not a magistrate, who *must* issue an order (included on the request form) for a law enforcement officer to take the respondent into custody for transport to the outpatient physician or center for examination. G.S. 122C-273(a)(2).

After examination, the outpatient treatment provider must release the respondent unless inpatient commitment proceedings are instituted. If inpatient commitment proceedings are instituted, the examination substitutes for the first examination ordinarily required for commitment. The clerk or magistrate must issue a custody order within six hours of the examination if this procedure is pursued. G.S. 122C-273(a)(2).

This provision allows the treatment provider to use law enforcement to force the respondent to submit to an examination. Unlike the procedure for a respondent who clearly refuses to comply, however, there is no concurrent request for and scheduling of a supplemental hearing.

***Respondent no longer meets outpatient commitment criteria.*** At any time that the respondent no longer meets the criteria for outpatient commitment, the court must be notified and the case terminated. There is an exception for a respondent first committed as a result of being charged with a violent crime and found incapable of proceeding. In that case, the treatment provider must notify the clerk that discharge is recommended. The clerk must schedule a supplemental hearing for the court to determine whether the respondent is to be released from outpatient commitment. G.S. 122C-273(a)(4); *see infra* § 8.12.

***Respondent moves to another state or to unknown location.*** The clerk of superior court of the county supervising outpatient treatment must be notified by the treatment provider if the respondent moves to another state or to an unknown location. The outpatient commitment is then terminated. G.S. 122C-273(c).

***Respondent becomes dangerous to self or others.*** Anyone who has knowledge that a person under outpatient commitment has become dangerous to self or others may initiate a petition for inpatient commitment. If the respondent is committed on an inpatient basis, the prior outpatient commitment is terminated. G.S. 122C-273(a)(5).