

9.3 Involuntary Commitment of Inmates

A. Applicability of Chapter 122C Procedures and Exceptions

The procedures of Chapter 122C for involuntary commitment of individuals for mental health treatment apply to inmates unless “manifestly inappropriate” or modified by the statute applicable to inmates, discussed below. G.S. 122C-313(a); *see supra* Chapter 2. The Department of Correction typically petitions for the involuntary commitment of an inmate only at the end of a sentence and not during incarceration.

B. Special Provisions for Inmates

Affidavit by staff psychiatrist or eligible psychologist. Involuntary commitment of an inmate can only be initiated by affidavit of a staff psychiatrist or eligible psychologist of the correctional facility. The affidavit must be transmitted to the clerk of the county where the correctional facility is located. G.S. 122C-313(a), 122C-261(d).

Attorney for inmate-respondent. Upon receipt of the affidavit of the staff psychiatrist or eligible psychologist, the clerk of superior court must give notice of the hearing to the respondent’s counsel. G.S. 122C-313(a). If the respondent is confined in a correctional facility located in the same county as a state facility, Special Counsel will represent the respondent. Otherwise, counsel is appointed according to rules adopted by the Office of Indigent Defense Services. G.S. 122C-313(d). Because IDS has not yet adopted statewide rules, the local rules for appointment of counsel of the county where the correctional facility is located will apply.

Inmate remains in correctional facility pending commitment hearing. Unlike the routine proceeding in which the respondent is held at the facility pending hearing, the inmate remains at the correctional facility until the involuntary commitment hearing. If the district court finds that the respondent meets the criteria for inpatient commitment, it then must order a transfer for treatment to a state facility designated by the Secretary of the Department of Health and Human Services. G.S. 122C-313(a).

Hearing. The hearing is held pursuant to Chapter 122C procedures. *See supra* § 2.6.

District court may not order outpatient commitment. The statute specifically provides that outpatient commitment is not a dispositional alternative at the involuntary commitment hearing. G.S. 122C-313(a). If the respondent does not meet the criteria for inpatient commitment, the inmate is returned to the custody of the correctional facility.

Expiration of sentence. If the sentence imposed by the criminal court expires during the term of the involuntary commitment, the respondent is treated as if initially committed under the statutes applicable to those not entering through the corrections system. G.S. 122C-313(b). In other words, the respondent is not released simply because the criminal sentence has expired. As long as the involuntary commitment criteria are met, the

respondent may be retained during the term of commitment and may be subject to rehearings.