

Chapter 1

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1.1 Purpose of Manual

This manual reviews the provisions of the North Carolina mental health and substance abuse laws as they pertain to commitments and admissions to 24-hour facilities and to outpatient commitments. Relevant statutes are found in Chapter 122C of the North Carolina General Statutes (hereinafter G.S.), entitled “Mental Health, Developmental Disabilities, and Substance Abuse Act of 1985.” North Carolina appellate court and U.S. Supreme Court decisions are discussed where

pertinent. Collateral consequences that may ensue as a result of commitment are explored as well as special provisions applicable to respondents committed through involvement with the criminal justice system.

The manual is designed to assist the attorney representing a respondent or minor facing a commitment, admission, or detention under an involuntary commitment custody order before admission to a 24-hour facility. The primary focus of the manual is on admissions and commitments requiring judicial review and thus on proceedings requiring the appointment of counsel. However, also discussed is pre-admission detention of respondents in involuntary commitment proceedings for which counsel may not have been appointed. This chapter presents a brief overview of the major topics presented.

1.2 Terminology Used in this Chapter

“Admission,” although not defined in the statutes, denotes the entrance of a person into a 24-hour facility through the voluntary action of the affected individual or of that individual’s legally responsible person. “Admission” to a 24-hour facility also occurs if approved after the second evaluation by a facility physician before the ten-day court hearing during involuntary commitment proceedings. *See infra* § 2.3K.

“Commitment,” although not defined by statute, is a legal status denoting the court-ordered treatment of a person for mental illness or substance abuse either on an inpatient basis in a 24-hour facility or on an outpatient basis.

“Legally Responsible Person” means: “(i) when applied to an adult, who has been adjudicated incompetent, a guardian; (ii) when applied to a minor, a parent, guardian, a person standing in loco parentis, or a legal custodian other than a parent who has been granted specific authority by law or in a custody order to consent for medical care, including psychiatric treatment; or (iii) when applied to an adult who is incapable . . . and who has not been adjudicated incompetent, a health care agent named pursuant to a valid health care power of attorney.” G.S. 122C-3(20).

“Respondent” is the person who is the subject of an involuntary commitment proceeding or who is admitted as a voluntary patient to a 24-hour facility by a legally responsible person.

“24-hour facility” is a facility providing around-the-clock treatment in a structured environment. G.S. 122C-3(14)g.

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.

1.4 Voluntary Admission

There are three types of voluntary inpatient admissions for either mental health or substance abuse treatment. The first is the admission of a competent adult on the individual's own application. As this is the only truly voluntary admission, no attorney representation is required and there is no judicial review. Discussion of this type of admission is included in this manual so that the attorney will be aware of it as a possible alternative for an involuntary client and because a voluntary admission may be part of a client's psychiatric history.

The following two types of admissions are also called "voluntary" in the statutes, but they are not truly voluntary on the part of the patient:

- voluntary admission of an incompetent adult, in which an adjudicated incompetent adult is admitted on application of the guardian of the person or general guardian; and
- voluntary admission of a minor, in which the admission application is signed by the legally responsible person for the minor.

Because someone other than the client signs the admission application, the statute provides for judicial review of the admission and for an appointed attorney for the individual.

For a discussion of voluntary admissions, including the dispositional alternatives for voluntary admissions, see *infra* Chapters 4, 5, 6, and 10.

1.5 Commitments and Admissions through the Criminal Justice System

Special provisions apply to individuals committed or admitted for mental health or substance abuse treatment through the criminal justice system. These include those automatically committed after being found not guilty by reason of insanity (“NGRI”) and those charged with a crime and found incapable of proceeding. Commitments for defendants who are incapable are subdivided into two categories depending on whether the crime charged is a violent crime. These commitments are commonly known as “Involuntary Incapable” when the underlying crime is a non-violent crime or “House Bill 95” when the underlying crime is a violent crime. Specific provisions apply as well for the commitment and admission of inmates and parolees. For a further discussion of commitment and admissions through the criminal justice system, see *infra* Chapters 7, 8, and 9.

1.6 Collateral Consequences

Serious consequences may ensue beyond the loss of freedom resulting from commitment for treatment. Counsel should advise clients of these possible consequences so that they can best make decisions throughout the judicial process. For a further discussion of collateral consequences, see *infra* Chapter 12.

1.7 Admissions Not Requiring Judicial Review

Individuals also may be admitted to a 24-hour facility through an advance instruction or a health care power of attorney. Each of these methods was created by legislation as a means to allow inpatient admission without the need for judicial process.

A. Advance Instruction

An advance instruction allows a person “of sound mind” to execute a document consenting to or refusing mental health treatment in advance of the need. The document becomes effective only if the person becomes incapable of making these decisions at a later date and is revocable as long as the person is not incapable. There is a limit of ten days of inpatient treatment pursuant to an

advance instruction. For a further discussion of advance instructions, see *infra* § 11.3.

B. Health Care Power of Attorney

A health care power of attorney allows a competent individual to execute a document designating a “legally responsible person” to make decisions relating to mental health treatment in the event of incapacity. As with an advance instruction, the document is revocable as long as the person is competent, and it is effective only upon the incapacity of the individual. For a further discussion of health care powers of attorney, see *infra* § 11.4.

Although there is no judicial review, and thus no attorney representation, counsel may occasionally receive telephone calls from patients or staff with questions regarding these admissions. It is important to know that these alternative procedures exist and to be able to determine if a particular admission is in compliance with statutory requirements. However, a respondent’s appointed counsel should not provide legal opinions to hospital personnel and instead should refer hospital personnel to the hospital’s own attorney.

1.8 Administrative Office of the Courts Forms

The Administrative Office of the Courts provides forms that may be used in the commitment and admission process. Copies of these forms are included in Appendix A of this manual. These forms are available online at the Judicial Department website, www.nccourts.org, under “Forms.” As these forms are being constantly reviewed and updated, the website should be checked for the latest version.

1.9 Division of Mental Health Forms

The Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, publishes forms that are used in the commitment and admission process. Copies of these forms are included in Appendix A of this manual. These forms are available online at the Department of Health and Human Services website, Manuals and Forms page, <http://www.ncdhhs.gov/mhddsas/statspublications/Forms/>, under “Legal Forms for Hospitals.”

Appendix 1-1

Commitments and Admissions: Quick Summary

Involuntary Commitment for Mental Health Treatment

- Law applies to adults and minors
- District court hearing within 10 days of date respondent taken into custody
- Maximum term of 90 days of inpatient commitment at initial hearing
- Maximum term of 180 days of inpatient commitment at first rehearing, and maximum of one year of inpatient commitment at second and subsequent rehearsings

Involuntary Commitment for Substance Abuse Treatment

- Law applies to adults and minors
- District court hearing within 10 days of date respondent taken into custody
- Commitment is to treatment of area authority or physician rather than to 24-hour facility
- Treatment may be on either inpatient or outpatient basis, as determined by area authority or physician
- Maximum term of 180 days of substance abuse commitment, with maximum of one year of substance abuse commitment at second and subsequent rehearsings
- Maximum 45 consecutive days of inpatient treatment without supplemental hearing

Outpatient Commitment

- Law applies to adults and minors
- District court hearing within 10 days of date respondent taken into custody
- Appointment of counsel in discretion of court
- Treatment on outpatient basis, not in 24-hour facility
- Can be initiated either by physician or eligible psychologist or recommended by examiner or attending physician at any stage in the involuntary commitment process

Voluntary Admission

- By application of guardian of the person or general guardian of incompetent adult—judicial review required and attorney appointed
- By application of legally responsible person for minor—judicial review required and attorney appointed
- By application of competent adult—judicial review not required and no attorney appointed

Commitment and Admission through Criminal Justice System

- Automatic commitment following verdict of not guilty by reason of insanity
- After defendant found incapable of proceeding
- Special provisions for commitment and admission of inmates and parolees

Admissions Not Requiring Judicial Review

- By advance instruction
- By application of health agent appointed pursuant to health care power of attorney