

Chapter 9: Involuntary Commitment and Voluntary Admission of Inmates

- 9.1 Overview / 131
- 9.2 Terminology Used in this Chapter / 131
- 9.3 Involuntary Commitment of Inmates / 132
- 9.4 Attorney Meeting with Respondent-Inmate / 133
- 9.5 Termination of Commitment / 134
- 9.6 Voluntary Admission and Discharge of Inmates / 134

9.1 Overview

Chapter 122C contains procedures for the involuntary commitment of inmates of the Department of Correction for treatment of mental illness, as well as for the voluntary admission of inmates for the treatment of mental illness *and* substance abuse. The statutory provisions for commitment of those who are not inmates are generally applicable to inmates as well. This chapter will focus on special provisions and issues concerning inmates only.

9.2 Terminology Used in this Chapter

“Correctional facility” means the facility operated by the North Carolina Department of Correction having physical custody of a person convicted of a criminal offense.

“Inmate” means a person convicted of a crime and placed in the physical custody of the Department of Correction. It does not include a person in jail pending trial.

“State facility” is a facility under the supervision of the Secretary of the Department of Health and Human Resources for the provision of “services for the care, treatment, habilitation, or rehabilitation of the mentally ill, the developmentally disabled or substance abusers. . . .” G.S. 122C-3(14), 122C-3(14)f.

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 respondent’s counsel. G.S. 122C-313(b). 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.

9.4 Attorney Meeting with Respondent-Inmate

The meeting with the respondent will be at the correctional facility, unless special arrangements can be made with the Department of Correction to transport the inmate elsewhere. Because of security concerns, this may not be possible.

Counsel should call the correctional facility to make arrangements to meet with the client. A private meeting place should be requested and provided, subject to accommodations to ensure counsel's safety. For example, a staff person could be within eyesight, but out of hearing range, during the meeting.

Counsel should make inquiry as to what form of identification is required to be admitted to the correctional facility, as well as what items are not permitted. The correctional facility may allow counsel to bring in only relevant court documents, a legal pad, and a pen. Briefcases and purses are usually prohibited. Prohibited items should be locked in the car trunk to avoid having to leave them in a secure area of the correctional facility. Having these matters in order before attempting to enter the facility will make the meeting go more smoothly and the time expended shorter.

When making an appointment with the client, counsel should also try to arrange meetings with prison staff, such as the social worker and psychiatrist or psychologist. If possible, arrangements to review relevant records should be made. The social worker may be able to obtain the client's consent and have the records available at the time of the appointment with the client.

Counsel should carefully explain that the involuntary commitment is a new proceeding, separate from the prior criminal trial. Counsel should inform the client that representation is for the involuntary commitment only and is not part of the criminal case, but should also explain how the two cases interconnect.

It is important to explain to the client exactly what will happen at the commitment hearing, reiterating that it is not a criminal trial. The dispositional alternatives, including possible confinement in a State facility, should be discussed. The client should be informed that the term of the involuntary commitment might last longer than the criminal sentence.

9.5 Termination of Commitment

Inmate no longer meets involuntary commitment criteria: sentence has not expired. If the attending physician determines that a respondent whose sentence has not expired no longer meets the criteria for involuntary commitment, the Department of Correction must be notified. The Department of Correction must arrange transportation for the inmate back to the correctional facility. G.S. 122C-313(c).

Inmate no longer meets involuntary commitment criteria: sentence expired. If the respondent's sentence has expired, the respondent is treated as if initially committed under the usual involuntary commitment procedures. G.S. 122C-313(b). The respondent must be released unless voluntarily admitted.

9.6 Voluntary Admission and Discharge of Inmates

Chapter 122C contains only one paragraph governing the voluntary admission and discharge of inmates. G.S. 122C-312. In practice, inmates needing psychiatric or substance abuse treatment receive treatment, if any, through the correctional system.

The statute provides that the provisions of Chapter 122C for voluntary admission apply, except that the Secretary of the Department of Health and Human Services and the Secretary of the Department of Correction must jointly agree to the voluntary admission. G.S. 122C-312; *see supra* Chapter 4 and *infra* Chapter 11.