

Judicial Review Hearings for Minors at Restrictive 24-hour Facilities

In North Carolina parents/legal guardians may seek the voluntary admission of a minor to a residential 24-hour facility if the minor is mentally ill and in need of treatment from such a facility. A minor receiving treatment in a 24-hour facility, where the minor's freedom of movement is restricted like that of State facilities for the mentally ill, is entitled to the **judicial review** of the voluntary admission. A minor patient in such a restrictive facility has a right to a court review of the admission and continued confinement at the facility. Right now, all 24-hour facilities that have locked units are considered to have restrictions on freedom of movement similar to that of State facilities for the mentally ill. Minors in those locked units are entitled to hearings. Outlined below are relevant statutes, practical tips and processes that have been successful to assist with implementation of this statutory mandate.

Statutory Provisions

122C-224: "When a minor is admitted to a 24-hour facility where the minor will be subjected to the same restrictions on his freedom of movement present in the State facilities for the mentally ill, or to similar restrictions, a hearing shall be held in the district court in the county in which the 24-hour facility is located within 15 days of the day that the minor is admitted."

122C-224.1: "Within 48 hours of receipt of notice that a minor has been admitted to a 24-hour facility wherein his freedom of movement will be restricted, an attorney shall be appointed for the minor. . . . [T]he Clerk shall calendar a hearing to be held within 15 days of admission for the purpose of review of the minor's admission. . . . The clerk shall schedule all hearings and re-hearings and send out notices as required."

122C-224.2: "The attorney shall meet with the minor within 10 days of his appointment, but not later than 48 hours before the hearing."

122C-224.3: "Hearings shall be held at the 24-hour facility in which the minor is being treated . . . unless the judge determines that the court calendar will be disrupted by such scheduling. The minor shall have the right to be present at the hearing, unless the judge rules favorably on the motion of the attorney to waive the minor's appearance. . . . Hearings are closed to the

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public unless the attorney requests otherwise. The hearing may not be held in a regular courtroom, over the objection of the minor's attorney, if in the discretion of the judge a more suitable place is available."

"For an admission to be authorized beyond the hearing, the minor must be (1) mentally ill or a substance abuser and (2) in need of further treatment at the 24-hour facility. Further treatment at the admitting facility should be undertaken only when lesser measures would be insufficient."

"The minor has a right to be present at the hearing unless the judge rules favorably on the motion of the attorney to waive the minor's appearance. However, the minor shall retain the right to appear before the judge to provide his own testimony and to respond to the judge's questions unless the judge makes a separate finding that the minor does not wish to appear upon motion of the attorney."

"Certified copies of reports and findings of physicians, psychologists and other responsible professionals as well as previous and current medical records are admissible in evidence, but the minor's right, through his attorney, to confront and cross-examine witnesses may not be denied."

At the hearing, "the court shall make one of the following dispositions: if the court finds by clear, cogent and convincing evidence that the requirements [above] the court shall concur with the voluntary admission and set the length of the authorized admission of a minor for a period not to exceed 90 days; or, If the court determines that there exist reasonable grounds to believe that the requirements [above] . . . have been met but that additional diagnosis and evaluation is needed before the court can concur in the admission, the court may make a one time authorization of up to an additional 15 days of stay, during which time further diagnosis and evaluation shall be conducted."

"If the court determines that the conditions for concurrence or continued diagnosis have not been met, the judge shall order that the minor be released."

122C-224.5: "When it is necessary for a minor to be transported to a location other than the treating facility for the purpose of a hearing, transportation shall be provided under the provisions of 122C-251. However, the 24-hour facility may obtain permission from the court to routinely provide transportation to and from hearings."

122C-251 addresses the transportation of minors. To the "extent feasible, law enforcement officers transporting respondents shall dress in plain clothes and shall travel in unmarked vehicles. . . . In providing transportation of a respondent, a city or county shall provide a driver or attendant who is the same sex as the respondent, unless the law-enforcement officer allows

a family member of the respondent to accompany the respondent in lieu of an attendant of the same sex as the respondent. In providing transportation required by this section, the law-enforcement officer may use reasonable force to restrain the respondent if it appears necessary to protect himself, the respondent, or others.”

122C-224.4: “If the minor continues to meet the criteria for admission the court shall concur with the continued admission . . . and set the length of the authorized admission for a period not to exceed 180 days.”

Practical tips

- This process involves the Clerk of Court in the county in which the 24-hour facility is located as well as the judges of that judicial district. The Clerk should be consulted about staffing the hearings, and will coordinate with the Chief district court judge concerning court dates and locations. A listing of clerks of court, and district court judges is available at www.nccourts.org.
- The Clerk of Court’s special proceedings section handles commitment hearings.
- The Chief District Court Judge should be consulted concerning setting a court date, where hearings will be held, and if the facility can transport. It helps if court can be the same day every week.
- The Sheriff’s office is most often tasked with transportation under 122C-251, referenced above. The Sheriff’s office should be contacted if the hearings are outside the facility and the facility will not be transporting.
- The process is form- and time-driven. For forms, see www.nccourts.org. Click on “Forms” and search for Forms AOC-SP-912M and AOC-SP-913M.
- The facility should designate one person to coordinate court documents and work with professional facility staff, court and judicial officials around scheduling, and also to be the point of contact for attorneys representing minors.

Processes that have been successful

- Upon the parent’s, custodian’s or guardian’s signing the request for admission form, a copy is sent to the clerk of court. This can be done via fax, if the fax machine is in an area that is private and not accessible by the general public. This should be done as soon as possible by the designated person. (Note this admission form varies from facility to facility, but should include language concerning the hearing process and the 72-hour hold upon request for discharge)
- The designated person needs some type of tracking system to keep a list of minors who need hearings, and who is on the court list for each court date. The clerk of court also can prepare a court list or “docket” from the files he or she receives.

- The clerk assigns an attorney, sets the matter for hearing and prepares the notice (see AOC form AOC-SP-912M).
- The facility professional fills out the evaluation form (for a good example, see NC DHHS form DMH-5-73-01; or each facility can develop a similar form with the same information) and sends that to the clerk of court, the attorney for the minor and keeps one in the client's chart. If the facility has an attorney doing the hearings, a copy would go to that attorney as well.
- The facility's treating professional has to be prepared at the hearing to offer evidence that the minor is mentally ill or a substance abuser, and is in need of further treatment at the 24-hour facility. It is helpful to also include evidence that the facility is the appropriate setting to meet the needs, i.e. lesser treatment measures would be insufficient. The professional who testifies should have personal knowledge of the minor's care and treatment, and treatment needs, and must make a recommendation to the court.
- The facility should maintain a copy of the court order (see AOC-SP-913M) in the minor's file.
- The facility's designated person should track the cases and be prepared to notify the clerk no later than 15 days before the initial period of concurrence expires, whether the responsible professional has determined if the minor needs to stay beyond the initial time period. If the responsible professional feels the minor meets criteria for continued stay, that fact is communicated to the Clerk of Court's office special proceedings clerk and a rehearing is scheduled. (See DMH form REQUEST FOR HEARING FORM, DMH 5-76-01.) The responsible professional also completes another evaluation form (DMH -5-73-01 or similar) to go with this request. The request for hearing and evaluation forms go to the attorney for the minor, the chart, and any attorney for the facility that handles the hearings, if there is one.
- The facility staff should work with the attorney for the minor to make this a smooth process, making sure that the attorney is given access to the minor and the minor's records that pertain to the necessity for admission or continued stay in the facility.
- If a judge orders the discharge of a minor, the minor should be released. It is helpful if the facility is aware that the judge can order the minor's discharge and be prepared to deal with that occurrence with a discharge plan.

If you have any questions about judicial review of the voluntary commitment process, please contact Professor Mark Botts at the University of North Carolina School of Government (919-962-8204).

Please note that effective July 1, 2011, the Division of Health Service Regulations (DHSR) has added this process to its facilities audit checklist. For more information on the DHSR audit checklist, you may contact Stephanie Alexander at 919-855-3795.

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