

Children in DSS Custody Who Need Treatment in a PRTF: There's a Disconnect

I recently finished a 2-day course for district court judges that focused on children with significant mental health needs. There were lots of questions about the admission and discharge process for a child who is in a county department's (DSS) custody and who needs treatment in a psychiatric residential treatment facility (PRTF). It's complicated because there are **two separate but simultaneously occurring court actions**:

1. the abuse, neglect, or dependency (A/N/D) action that addresses a child's custody, placement, and services; and
2. the judicial review of a child's voluntary admission to a secure psychiatric treatment facility that was made with the consent of the child's legally responsible person.

The two actions involve different parties, courts, purposes, and laws, and they are often not coordinated even though they directly impact each other.

Placement in a PRTF

North Carolina requires a judicial review when a child is admitted to a 24-hour mental health or substance abuse facility that has the same or similar restrictions on the child's freedom of movement as a state-operated psychiatric hospital. [G.S. 122C-224](#). A "24-hour facility" provides a structured living environment and services to a patient for at least 24 consecutive hours and includes state psychiatric hospitals, public or private facilities providing acute inpatient care, and PRTFs. [G.S. 122C-3\(14\)g](#). PRTFs provide treatment to children who are mentally ill or substance abusers in need of care in a non-acute inpatient setting and whose removal from home or a community based residential setting is essential for treatment. [10A NCAC 27G.1901](#). Round the clock supervision and therapeutic interventions are provided with the goal of facilitating the child's transition to a less intensive and structured community setting. *Id.* For children insured by Medicaid, **prior approval** that the child's treatment in a PRTF is **medically necessary** must be obtained from the local management entity/managed care organization (**LME/MCO**). NC Div. of Medical Assistance, PRTF, Clinical Coverage Policy [8-D-1, 5.0](#); see [G.S. 122C-3\(20c\)](#).

When a child needs treatment in a PRTF, the placement is made by the child's **legally responsible person**: a parent, guardian, person standing in loco parentis, or legal custodian other than a parent who is specifically authorized by law or a court order to consent to medical care, including psychiatric treatment. [G.S. 122C-3\(20\)\(ii\)](#); -221(a).

The Role of the A/N/D Court and DSS in a Child's Admission

When a child has been adjudicated abused, neglected, or dependent, DSS recommends a

treatment plan that addresses the child's needs. [G.S. 7B-808\(b\)](#). The court may order that the child receive a mental health evaluation by a qualified professional. [G.S. 7B-903\(d\)](#). When the court finds the child is mentally ill, it may order DSS to coordinate with the LME/MCO to develop the child's treatment plan. [G.S. 7B-903\(e\)](#). The court does not have authority to order the child's placement in a PRTF. See [G.S. 7B-903\(a\), \(e\)](#). If the child needs treatment in a 24-hour facility, the admission must be made by the child's legally responsible person. When the court orders a child into DSS custody, DSS is the child's legally responsible person if the court also authorizes DSS to consent to the child's mental health care or treatment pursuant to [G.S. 7B-505.1\(c\)](#). See [G.S. 7B-903.1\(e\)](#). Otherwise, the child's parent, guardian, or person acting in loco parentis is the child's legally responsible person for admission purposes. G.S. 122C-3(20)(ii).

Judicial Review of a Voluntary Admission

Although a child's admission to a PRTF is voluntarily made with the consent of the minor's legally responsible person, NC law requires judicial review of the minor's "voluntary admission." [G.S. 122C, Article 5, Part 2](#). The purpose of the judicial review is to protect the child's liberty interest by ensuring that the child is not improperly admitted or improperly remains in the facility. [G.S. 122-221\(b\)](#); *In re A.N.B.*, 232 N.C. App. 406 (2014).

The judicial review is heard by the **district court in the county where the facility is located**. [G.S. 122C-224\(a\)](#). If the PRTF is in a different county from where the A/N/D case is pending, a different court will conduct the judicial review.

The judicial review **process begins within 24 hours** of when the child is admitted to the PRTF when the facility notifies the clerk of court of the child's admission and need for a hearing. [G.S. 122C-224\(c\)](#). The facility also notifies the clerk of the names and addresses of the child's legally responsible person and responsible professional (the person in the facility who is designated to be responsible for and is qualified to provide the child's care and treatment). *Id.*; [G.S. 122C-3\(32\)](#).

Within 48 hours of receiving the notice from the facility, the clerk must **appoint an attorney for the child**, who is presumed indigent. [G.S. 122C-224.1\(a\)](#); [AOC-SP-912M](#). This attorney is not the GAL/attorney advocate appointed to represent the child in the A/N/D proceeding. See [G.S. 7B-601](#). This newly appointed attorney represents the child in the judicial review proceeding and continues to represent the child until the judge relieves him or her of the appointment. [G.S. 122C-224.2\(c\)](#). The attorney meets with the child within 10 days of the appointment and at least 48 hours before the hearing. [G.S. 122C-224.2\(a\)](#).

The **hearing must be held within 15 days** of the child's admission to the facility. G.S. 122C-224(a), [-224.1\(b\)](#). At least 72 hours before the hearing, **notice of the hearing** is sent to the child's attorney, the child's legally responsible person, and the responsible professional. G.S. 122C-224.1(b). The hearing is closed to the public unless the child's attorney requests otherwise. [G.S. 122C-224.3\(d\)](#). The hearing is **held at the facility** unless the judge determines the

court calendar will be disrupted by holding the hearing there. [G.S. 122C-224.3\(a\)](#). In that case, the hearing may be held in a different location, such as the judge's chambers, but it should not be conducted in a courtroom if the child's attorney objects and there is a more suitable place available. *Id.* The child has a right to be present at the hearing and to testify, but he or she may waive that right or limit his or her appearance to when testifying. [G.S. 122C-224.2\(b\)](#), [-224.3\(b\)](#). Certified copies of medical records, including a psychologist's or other professional's findings and reports, are admissible in evidence so long as the child's right to confront and cross-examine witnesses is not denied. [G.S. 122C-224.3\(c\)](#); *In re C.W.F.*, 232 N.C. App. 213 (2014).

It is unclear if a legally responsible person who receives notice of the hearing is a **party** to the proceeding. *In re M.B.*, 771 S.E.2d 615 (2015). Unlike the Juvenile Code, which explicitly states that a person who has a right to notice and to be heard in certain A/N/D hearings is not a party, the statutes authorizing the judicial review of a voluntary admission are silent about the legally responsible person's role in the judicial review. Compare [G.S. 7B-906.1\(b\)](#), [-908\(b\)\(1\)](#), [-1112.1 to 122C-224.1\(b\)](#). Because a judicial review hearing is a civil proceeding, the court may look to the Rules of Civil Procedure to determine if a party should be joined or allowed to intervene if a motion is filed. See G.S. 1A-1, Rules [19](#), [20](#), [24](#); *In re A.N.B.*

The Order

There are **three possible dispositional orders**.

1. The court **concurs** in the child's continued admission and **authorizes a treatment period for up to 90 days** if the court finds by **clear, cogent, and convincing evidence**
 - the child is mentally ill or a substance abuser,
 - the child is in need of further treatment at the 24-hour facility, and
 - less restrictive measures will be insufficient. When the court is determining if less restrictive measures will be insufficient, it may look at whether those lesser measures are actually available (e.g., is there an available bed in a less restrictive facility). [G.S. 122C-2](#); *In re M.B.*
2. The court orders a **one-time 15-day additional stay** when the court believes there are reasonable grounds to believe the child is mentally ill or a substance abuser and is in need of treatment at the facility but additional diagnoses and evaluations are needed for the court to make a determination, or
3. The court orders the **child's release**.

[G.S. 122C-224.3\(f\), \(g\)](#); [AOC-SP-913M](#).

Additional Judicial Reviews

If the court concurs and orders continued admission for up to 90 days, the child is entitled to another judicial review before that additional treatment period ends. [G.S. 122C-224.4\(b\)](#). At subsequent judicial reviews, the court may order the **child's release or continued admission for up to 180 days**. *Id.* Judicial reviews will be held prior to the expiration of each subsequently authorized admission period when the responsible professional recommends a continued stay. G.S. 122C-224.4(b), (c). The responsible professional notifies the clerk at least 15 days before the admission period expires that an additional stay is recommended. G.S. 122C-224.4(c).

Discharge

Discharge planning to a less restrictive treatment setting starts at the child's admission and is part of a child's treatment plan. [10A NCAC 27G.1903\(c\)](#). Legally responsible persons (e.g., parent or DSS social worker) and/or family members must be involved in the development and implementation of the child's treatment plans. [10A NCAC 27G.1903\(e\)](#). Before a child is discharged, the facility should meet with the child and family team, including the DSS social worker, and make service planning decisions. [10A NCAC 27G.1904](#).

A child is discharged when

- the court orders the child's release,
- the responsible professional determines the child is no longer mentally ill or a substance abuser or in need of treatment at the facility,
- the legally responsible person files a written request for the child's discharge with the facility (however, the facility may hold the child for 72 hours and seek an involuntary commitment if appropriate), or
- the child turns 18 and does not consent to the treatment.

[G.S. 122C-224.7](#); -224.3(g)(3).

What About the A/N/D Court?

The A/N/D court does not hear the judicial review of a child's voluntary admission and will not be aware of what was decided at that judicial review unless evidence of what was ordered is introduced in the A/N/D proceeding. If the A/N/D court wants to timely coordinate its hearings with the judicial review of the child's voluntary admission or with the child's discharge, it may consider ordering

- the legally responsible person (e.g., parent or DSS) notify the clerk of the date for the judicial review of voluntary admission so that the clerk may schedule a review hearing in the A/N/D proceeding shortly afterwards. See [G.S. 7B-906.1\(a\)](#); -1000.
- the legally responsible person make efforts to obtain the permission of the court deciding the voluntary admission to release information from that court file, such as the court order,

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for the purpose of admitting a copy in the A/N/D proceeding. See [G.S. 122C-54\(d\)](#).

- DSS to participate in the child's treatment and discharge planning and to work with the PRTF to make timely efforts to secure a child's post-discharge placement. See *In re M.B.*
- the legally responsible person notify the clerk of a need for a review hearing if that person files a written request with the PRTF for the child's discharge.

