



**Issues in
Involuntary Commitment**

NC Magistrates' Fall Conference
September 28, 2022

Mark Botts

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Topics—Issues Related To:

- Submissions for the clinician petition procedure
- Issuing the custody order
- Review of petitions following a “seven-day” termination
- Explaining “next steps” to the petitioner

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**The Clinician Petition
Procedure**

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- Who qualifies to use the procedure?
- How do you know if a particular petitioner qualifies?
- Who must sign the two forms submitted to you?

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The Clinician Petition Procedure

- What is the primary feature of the clinician petition procedure?
 - Personal appearance before the magistrate is not required
- Who is eligible to use the clinician petition procedure?
 - A “commitment examiner”
- Who is a “commitment examiner?”

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Commitment Examiner

- A physician,
- A PhD psychologist with a health services provider certificate, or
- Any health professional or mental health professional who is **certified** under G.S. 122C-263.1 to perform the first examination for involuntary commitment

G.S. 122C-3(8a)

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G.S. 122C-263.1

- The Secretary of Health and Human Services may *individually* certify to perform the first commitment examinations required by G.S. 122C-261 through G.S. 122C-263 and G.S. 122C-281 through G.S. 122C-283 other health, mental health, and substance abuse professionals . . .
- A certification . . . shall be in effect for . . . up to three years

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Commitment Examiner

The DHHS Sec’y may individually certify the following professionals:

- licensed clinical social worker (LCSW)
- master’s level or higher nurse practitioner (NP)
- physician assistant (PA)
- licensed clinical mental health counselor (LCMHC)
- licensed marital and family therapist (LMFT)
- licensed clinical addictions specialist (LCAS)—for substance abuse commitment only

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Forms for Clinician Petition

- “First Examination For Involuntary Commitment” (DMH 5-72-19)
 - <https://www.ncdhhs.gov/assistance/mental-health-substance-abuse/involuntary-commitments>
 - “Affidavit and Petition for Involuntary Commitment” (AOC-SP-300)
 - <https://www.nccourts.gov/documents/forms?>
- ❖ To petition the magistrate for a custody order under the clinician procedure, a clinician must complete and submit both forms

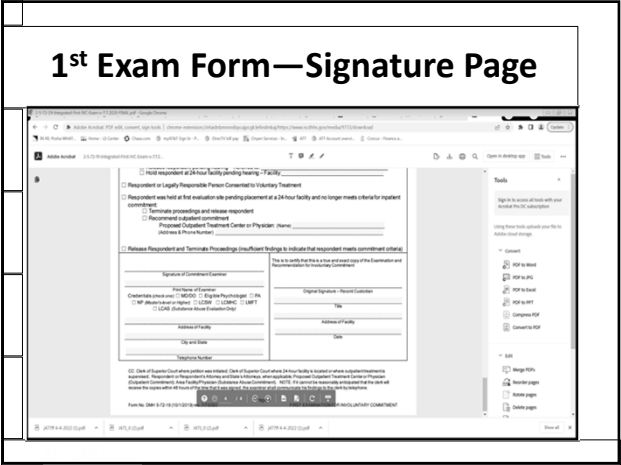
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Affidavit and Petition

Name And Address Of Respondent Relative Or Guardian		Name And Address Of Person Other Than Petitioner Who May Testify	
Home Telephone No.	Business Telephone No.	Home Telephone No.	Business Telephone No.
Petitioner requests the court to issue an order to a law enforcement officer to take the respondent into custody for examination by a person authorized by law to conduct the examination for the purpose of determining if the respondent should be involuntarily committed.			
SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME			
Date	Signature	Signature Of Petitioner	
Name And Address Of Petitioner (use or print)			
<input type="checkbox"/> Deputy CSC	<input type="checkbox"/> Assistant CSC	<input type="checkbox"/> Clerk Of Superior Court	<input type="checkbox"/> Magistrate
<input type="checkbox"/> Notary (use only with physician or psychologist witnesses)	Date Notary Commission Expires	Relationship To Respondent	
SEAL	County Where Notarized	Home Telephone No.	Business Telephone No.
Original File Copy-Hospital Copy-Special Counsel Copy-Attorney General (over)			
AOC-SP-300, Rev. 5/17 © 2017 Administrative Office of the Courts			

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1st Exam Form—Signature Page



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G.S. 122C-263.1

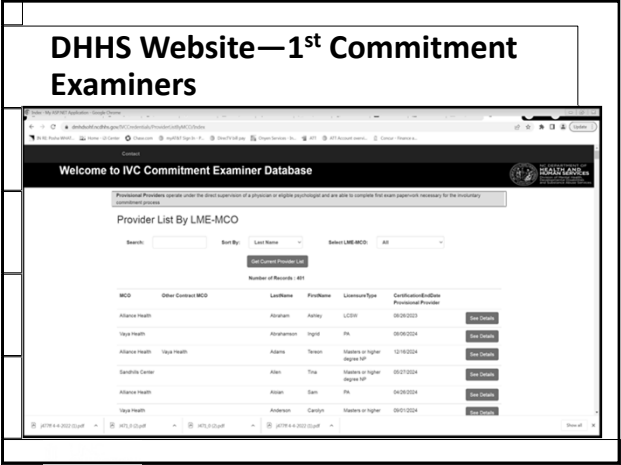
No less than annually, the Department shall

- submit a list of certified first commitment examiners to the Chief District Court Judge of each judicial district in North Carolina, and
- maintain a current list of certified first commitment examiners on its Internet Web site.

dmhdsohf.ncdhhs.gov/IVCCredentials/ProviderList

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DHHS Website—1st Commitment Examiners



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What are the Clinician Petition Requirements?

Must the petitioner—the one signing the affidavit—be the same person as the person signing the first examination form?

Must the commitment examiner perform a face-to face examination of the respondent?

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Clinician Petition Procedure—G.S. 122C-261(d)

- If the affiant is a **commitment examiner** who:
 - Examines the respondent (physical face to face presence or via telemedicine equipment and procedures), **and**
 - Signs the “Affidavit and Petition” before an official authorized to administer oaths (notary),
- Then petitioner may file the examination and affidavit forms by delivering copies through facsimile transmission
- Must mail originals within 5 days to the clerk of superior court
- The affiant shall document in writing and file the examination findings with the affidavit.



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Telehealth—G.S. 122C-263©

- The respondent may either be in the physical face-to-face presence of the commitment examiner or may be examined utilizing telehealth equipment and procedures.
- “Telehealth” means the use of two-way, real-time interactive audio and video where the respondent and commitment examiner can hear and see each other.

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Issuing the Custody and Transportation Order



- To whom to issue the order
- Method for delivering the order

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Custody Order

To whom must you issue the order?

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Issuing the Custody Order

The magistrate shall issue the order to

- a law enforcement officer or
- any other person authorized under G.S. 122C-251

to take the respondent into custody . . .

G.S. 122C-261

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Issuing the Custody Order

- Law-enforcement officer—a sheriff, deputy sheriff, police officer, State highway patrolman, or an officer employed by a city or county under G.S. 122C-302 (officers employed and trained to assist individuals who are intoxicated in public). G.S. 122C-3.
- Designated person—a person designated in the transportation plan of a city or county, adopted under G.S. 122C-251(g), to provide a part or all the transportation and custody required by the involuntary commitment process.

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County Transportation Plan

- Every county must adopt a plan for transportation of respondents in involuntary commitment proceedings.
- The plan may designate persons other than law enforcement officers to carry out all or part of the transportation and custody.
- Volunteers and public or private agency personnel other than law enforcement officers may be designated.

G.S. 122C-251(g).

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County Transportation Plan

Designated persons must participate in training identified by the LME/MCO that, to the extent feasible, addresses

- use of de-escalation strategies and techniques
- safe use of force and restraint
- respondent rights relative to involuntary commitment
- location of first examination sites, and
- completion and return of service. G.S. 122C-202.2.

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How do you deliver the order?

When you issue the custody order to a law enforcement officer or other designated person, how do you deliver the order to that person?

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2015 Legislation—GS 122C-210.3

- A custody order may be delivered to the law enforcement officer or other designated person by electronic or facsimile transmission.



- Applies to all custody orders including
 - Transfer from one 24-hour facility to another
 - Outpatient pick up order

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Wynn v. Frederick

- Robert Morris has history of serious mental illness
- Involuntarily committed 3 times in 2016; becomes violent when not taking medication
- Under the care of UNC Assertive Community Treatment team
- Team regularly visits Morris at home to monitor conditions and medication compliance
- Morris receives care from Dr. Hall, ACT team medical director

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Wynn v. Frederick

December 16, 2016, morning:

- Ms. Wynn, mother of Mr. Morris, informs ACT team that Morris is not taking medication, has not slept for 3 days, spent night guarding the house with a crossbow, and has unreasonable fear for Mom's safety.
- Dr. Hall visits Mr. Morris and mother at their home and determines Morris meets the criteria for involuntary commitment
- Hall prepares petition, has it notarized, and sends to magistrate

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Wynn v. Frederick

- Affidavit and petition indicate that Dr. Hall is affiliated with UNC.
- Magistrate faxes custody order to UNC Hospitals on the same day, Dec. 16, 2:17 pm.
- It is not clear who, if anyone, received the custody order at UNC. It is not clear if UNC contacted the magistrate regarding the order.
- Morning of Dec. 17, Dr. Hall calls Ms. Wynn to see if the Sheriff's Office had picked up Robert Morris. Ms. Wynn responded that it had not.
- Dr. Hall calls the magistrate

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Wynn v. Frederick

- When magistrate learns Mr. Morris is not at the hospital, but at home, magistrate asks Dr. Hall to fax the petition so that he could reissue the custody order.
- Dr. Hall faxes documents to the magistrate's office at 9:27 a.m.
- At 11:20 a.m., a Sheriff's Deputy receives a faxed custody order and heads to Mr. Morris' home.
- Before the deputy arrives, Mr. Morris shoots a family member in the neck with a crossbow, puncturing his cervical spine, spinal cord, and left vertebral artery, instantly paralyzing Mr. Wynn.

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Wynn v. Frederick

- To whom was the initial custody order issued?
- What do you think about the method of delivery?

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The “Seven-Day” Custody Order



- To whom to issue the order
- Method for delivering the order

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Steps Following the First Exam

After a 1st examination recommending inpatient commitment, the law enforcement officer or other designated person must transport the respondent to a 24-hour facility for custody, examination and treatment pending hearing

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Steps Following the First Exam

If a 24-hour facility is not

- Immediately available or
- Medically appropriate

The respondent may be temporarily detained under appropriate supervision at the site of first examination.

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Seven Day Limit

Seven days after issuance of custody order, commitment must be terminated if 24-hour facility still not available or medically appropriate

- Physician must report to clerk of court
- Proceedings must be terminated

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Seven Day Limit

If the respondent continues to meet the commitment criteria, a new commitment proceedings may be initiated

- Requires new petition. The affidavit filed in support of the terminated proceeding is not sufficient.
- Requires new examination if petitioner is a commitment examiner. Examiner shall not rely on examinations conducted as part of terminated proceedings.
- Requires new custody order to continue holding the respondent.

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Magistrate Communication with the Petitioner



- What are you required to say?
- What may you say?

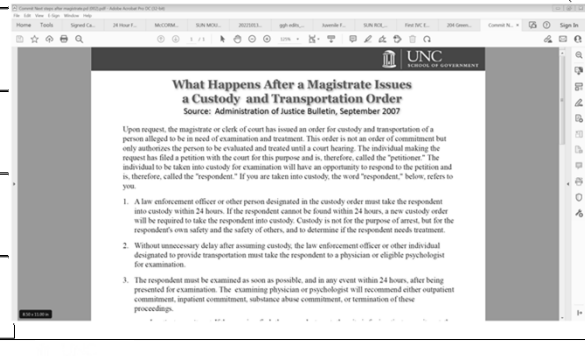
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If You Issue Custody Order AOC-SP-302A

The magistrate shall provide the petitioner and the respondent, if present, with specific information regarding the next steps that will occur for the respondent.

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What Happens Next?



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	Other Information
	<ul style="list-style-type: none"> ▪ Other useful information: <ul style="list-style-type: none"> • Law enforcement protocol on restraint • Likely wait time at community hospital ▪ Useful contact information <ul style="list-style-type: none"> • Other resources/options for petitioner if the commitment process terminates at the first examination

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	Community Crisis Plans
	<ul style="list-style-type: none"> ▪ Do you know what resources are available in your county? ▪ Are you familiar with your county's "community crisis plan?"

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	Community Crisis Plans
	<p>NC's public mental health authorities, a.k.a., "LME-MCOs" are required by statute to create a "community crisis plan"</p> <ul style="list-style-type: none"> ▪ developed with the participation of acute care hospitals, other first examination facilities, law enforcement agencies, and magistrates ▪ identifies where respondents shall be taken for the first exam. Intended to divert some respondents from hospital ED to mental health facilities with commitment examiners.

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LME-MCO service regions—2022

Regional Behavioral Health and Intellectual/Developmental Disability Tailored Plans - Projected County Alignments at Tailored Plan Launch for December 1, 2022

LME/MCO Name

- Alliance Health
- Eastpointe
- Partners Health Management
- Sandhills Center
- Trillium Health Resources
- Yaya Health

This map shows projected county assignments based on disengagement/transitions completed or approved as of 12/1/21.

- Tailored Plan contracts awarded to all existing LME/MCOs
- DHHS working with future Tailored Plan to prepare for December 2022 implementation

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Crisis Services Brochure

What happens next?

Once you are connected to a service provider, they are your "first responder" and will give you critical information on how you can reach them at any time in case of a crisis.

Your provider works with you to develop a crisis plan that is unique to you. The plan includes what you, your family and your friends are to do in a behavioral health crisis episode in the future.

Want to learn more?

To learn more about behavioral health services in your community, call Partners at 1-888-238-4003 (4003) or visit our website at www.PartnersDHHS.org.

Partners is a Local Management Entity/Managed Care Organization (LME/MCO) responsible for providing access to care for people who need services for mental health, intellectual/developmental disabilities and substance use disorders (MIDD/ID/UD) in central and western North Carolina. Partners manages all Medicaid, state and local funding for MIDD/ID/UD services in that covered area.

Access to Care: 1-888-238-4003 (4003)
 Administrative Offices: 10776 Old 66A
 Website: www.PartnersDHHS.org
 Email: membersandpartners@partners.org
 Columbia Office:
 901 Stone House Hill, Columbia, NC 28044

Find us on Social Media

Where do you turn when a behavioral health crisis occurs?

Need help now?

Call 1-888-238-4003 (4003) anytime day or night. Partners' Access to Care Call Center staff will connect you to services for:

- Scheduling an appointment
- Directing you to a nearby clinic
- Sending a crisis professional out to meet you

Pregnant women using drug and alcohol screening drugs receive priority scheduling. If the applies to you, you will receive the first open appointment.

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Questions?

- Mark Botts
 - 919.962.8204 office
 - 919.923.3229 mobile
 - botts@sog.unc.edu

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What Happens After a Magistrate Issues a Custody and Transportation Order

Source: Administration of Justice Bulletin, September 2007

Upon request, the magistrate or clerk of court has issued an order for custody and transportation of a person alleged to be in need of examination and treatment. This order is not an order of commitment but only authorizes the person to be evaluated and treated until a court hearing. The individual making the request has filed a petition with the court for this purpose and is, therefore, called the "petitioner." The individual to be taken into custody for examination will have an opportunity to respond to the petition and is, therefore, called the "respondent." If you are taken into custody, the word "respondent," below, refers to you.

1. A law enforcement officer or other person designated in the custody order must take the respondent into custody within 24 hours. If the respondent cannot be found within 24 hours, a new custody order will be required to take the respondent into custody. Custody is not for the purpose of arrest, but for the respondent's own safety and the safety of others, and to determine if the respondent needs treatment.
2. Without unnecessary delay after assuming custody, the law enforcement officer or other individual designated to provide transportation must take the respondent to a physician or eligible psychologist for examination.
3. The respondent must be examined as soon as possible, and in any event within 24 hours, after being presented for examination. The examining physician or psychologist will recommend either outpatient commitment, inpatient commitment, substance abuse commitment, or termination of these proceedings.
 - *Inpatient commitment:* If the examiner finds the respondent meets the criteria for inpatient commitment, the examiner will recommend inpatient commitment. The law enforcement officer or other designated person must take the respondent to a 24-hour facility.
 - *Outpatient commitment:* If the examiner finds the respondent meets the criteria for outpatient commitment, the examiner will recommend outpatient commitment and identify the proposed outpatient treatment physician or center in the examination report. The person designated in the order to provide transportation must return the respondent to the respondent's regular residence or, with the respondent's consent, to the home of a consenting individual located in the originating county. The respondent must be released from custody.
 - *Substance abuse commitment:* If the examiner finds the respondent meets the criteria for substance abuse commitment, the examiner must recommend commitment and whether the respondent should be released or held at a 24-hour facility pending a district court hearing. Depending upon the physician's recommendation, the law enforcement officer or other designated individual will either release the respondent or take him or her to a 24-hour facility.
 - *Termination:* If the examiner finds the respondent meets neither of the criteria for commitment, the respondent must be released from custody and the proceedings terminated. If the custody order was based on the finding that the respondent was probably mentally ill, then the person designated in the order to provide transportation must return the respondent to the respondent's regular residence or, with the respondent's consent, to the home of a consenting individual located in the originating county.
4. If the law enforcement officer transports the respondent to a 24 hour facility, another evaluation must be performed within 24 hours of arrival. This evaluator has the same options as indicated in step 3 above. If the respondent is not released, the respondent will be given a hearing before a district court judge within 10 days of the date the respondent was taken into custody.



North Carolina Involuntary Commitment Process

Layperson petition
Layperson completes petition in front of magistrate

Magistrate reviews petition & issues custody order

Officer transports respondent

Hospital ER or LME facility (1st exam)

Officer transports respondent

Clinician petition
Clinician completes petition & exam form (1st exam), then faxes to magistrate

Magistrate reviews petition & issues custody order

Officer transports respondent

24-hour facility (2nd exam)

Emergency petition*
Clinician completes exam form & emergency certificate (1st exam), submits to clerk of court for 24-hr. facility & local officer

Officer transports respondent pursuant to emergency certificate

District court judge reviews examination form

Hearing: Court orders release, outpatient, inpatient, or substance abuse commitment

*Use when respondent requires immediate hospitalization; procedure by-passes magistrate.



Criteria for Involuntary Commitment in North Carolina

Mental Illness (Adults)

an illness that so lessens the capacity of the individual to use self-control, judgment, and discretion in the conduct of his affairs and social relations as to make it necessary or advisable for him to be under treatment, care, supervision, guidance, or control.

Mental Illness (Minors)

a mental condition, other than mental retardation alone, that so impairs the youth's capacity to exercise age-adequate self-control or judgment in the conduct of his activities and social relationships that he is in need of treatment.

Substance abuse

the pathological use or abuse of alcohol or other drugs in a way or to a degree that produces an impairment in personal, social, or occupational functioning. Substance abuse may include a pattern of tolerance and withdrawal.

Dangerous to self

Within the relevant past, the individual has:

1. acted in such a way as to show that
 - a. he would be unable, without care, supervision, and the continued assistance of others not otherwise available, to exercise self-control, judgment, and discretion in the conduct of his daily responsibilities and social relations, or to satisfy his need for nourishment, personal or medical care, shelter, or self-protection and safety; and
 - b. there is a reasonable probability of his suffering serious physical debilitation within the near future unless adequate treatment is given. Behavior that is grossly irrational, actions that the individual is unable to control, behavior that is grossly inappropriate to the situation, or other evidence of severely impaired insight and judgment creates an inference that the individual is unable to care for himself; or
2. attempted suicide or threatened suicide and there is a reasonable probability of suicide unless adequate treatment is given; or
3. mutilated himself or attempted to mutilate himself and there is a reasonable probability of serious self-mutilation unless adequate treatment is given.

Previous episodes of dangerousness to self, when applicable, may be considered when determining the reasonable probability of serious physical debilitation, suicide, or serious self-mutilation.

Dangerous to others

Within the relevant past the individual has:

1. inflicted, attempted to inflict, or threatened to inflict serious bodily harm on another and there is a reasonable probability that this conduct will be repeated, or
2. acted in a way that created a substantial risk of serious bodily harm to another and there is a reasonable probability that this conduct will be repeated, or
3. engaged in extreme destruction of property and there is a reasonable probability that this conduct will be repeated.

Previous episodes of dangerousness to others, when applicable, may be considered when determining the reasonable probability of future dangerous conduct. Clear, cogent, and convincing evidence that an individual has committed a homicide in the relevant past is evidence of dangerousness to others.

