

NC District Court Judges 2023 Fall Conference

Mark Botts



Involuntary Commitment

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Involuntary Commitment

- Criteria—The grounds for court-ordered treatment.



- Procedure—The process for obtaining court-ordered treatment.



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Topics

- How is IVC initiated?
 - Citizen petition
 - Clinician petition
 - Emergency procedure
 - Incapable to proceed
- Who is a qualified examiner?
- District court order
 - Findings specific to outpatient commitment
 - Findings of fact for all commitment orders

The Magistrate or Clerk



- Determines whether there are reasonable grounds to believe that
 - the facts alleged in the affidavit are true, and
 - the respondent probably meets the criteria for commitment
- Issues an **Order** that respondent be taken into custody and examined for commitment



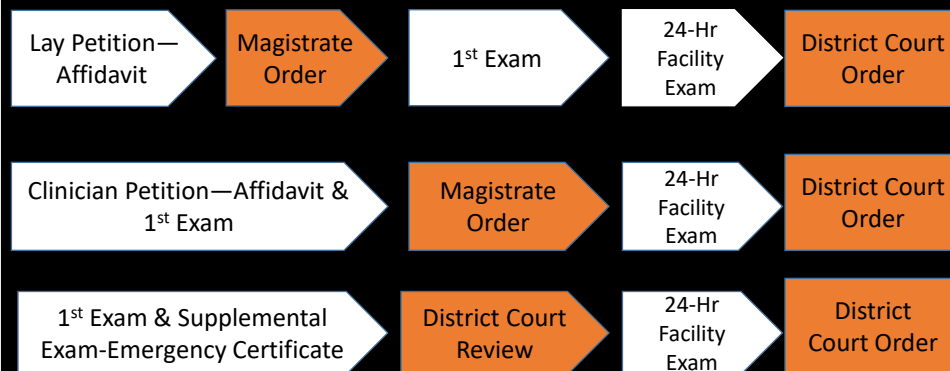
The District Court Judge

Upon a hearing, **orders** commitment of the respondent if there is clear, cogent, and convincing evidence that the respondent meets the criteria for commitment



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Overview of Civil Commitment Procedure—Three Procedural Pathways



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The Layperson Petition Procedure



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The Petitioner

- Anyone with knowledge may petition
- Petitioner must appear personally
- Jurisdiction is in the county where respondent resides or is found



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Magistrate Role

If the magistrate finds reasonable grounds to believe that the commitment criteria are met for either

- outpatient commitment,
- inpatient commitment, or
- substance abuse commitment

the magistrate shall issue a custody and transportation order (AOC-SP-302A)



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The Magistrate

Determines whether there are *reasonable grounds to believe* that

- the facts alleged *in the affidavit* are true, and
- the respondent probably meets *the statutory criteria* for commitment

STATE OF NORTH CAROLINA		File No.	
County		In The General Court Of Justice District Court Division	
IN THE MATTER OF		AFFIDAVIT AND PETITION FOR INVOLUNTARY COMMITMENT	
Name And Address Of Respondent			
Social Security No. Of Respondent (if available)	Date Of Birth	Drivers License No. Of Respondent	G.S. 122C-261, 122C-261 Date
I, the undersigned affiant, being first duly sworn, and having sufficient knowledge to believe that the respondent is a proper subject for involuntary commitment, allege that the respondent is a resident of, or can be found in the above named county, and is:			
(check all that apply)			
<input type="checkbox"/> 1. mentally ill and dangerous to self or others or mentally ill and in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness.			
<input type="checkbox"/> in addition to being mentally ill, respondent is also "mentally retarded" pursuant to G.S. 122C-261.			
<input type="checkbox"/> 2. a substance abuser and dangerous to self or others.			
The facts upon which this opinion is based are as follows: (State facts, not conclusions, to support ALL blocks checked)			



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Appellate Court:

“Statute requires the affidavit to *contain the facts* on which the affiant’s opinion is based. *Mere conclusions do not suffice* to establish reasonable grounds for issuance of custody order.” In re Ingram, 74 N.C. App. 579 (1985).

Information Must Be Factual

Facts

Conclusions (Opinions)

- Violent
- Threatening
- Aggressive
- Assaulted someone

Descriptive Facts

- Hit boss with a wrench
- Said he would cut brother while he slept
- Pushed Mom off the porch
- Held hammer in air saying he was going to bust mother’s head

Conclusions

Custody-GS 122C-261

The magistrate shall issue the order to a

- law enforcement officer or
- other designated person (G.S. 122C-251)

to take the respondent into custody for examination by a commitment examiner

Custody-GS 122C-261, -251

Upon receipt of the custody order, the LEO must take the respondent into custody within 24 hours after the order is signed



Without unnecessary delay, the officer must take the respondent to a commitment examiner for examination

Commitment Examiner

As soon as possible and w/n 24 hours after respondent is presented, perform 1st exam to determine if respondent meets criteria for any of the following:

- Outpatient commitment
- Inpatient commitment
- Substance abuse commitment



Examination Findings and Recommendations

Findings

Recommendation

Commitment criteria not met	→ Release
Outpatient commitment	→ Release pending hearing
Inpatient commitment	→ Inpatient facility
Substance abuse commitment	→ Release or inpatient facility

Findings shall be in writing and a copy sent to clerk by the most reliable and expeditious means.



Summary: Procedure for the Layperson

1. Petition
2. Magistrate issues Custody Order
3. Custody and transportation to site of 1st Exam
4. Commitment Examination; Examiner sends findings to Clerk
5. Respondent released or transported to a 24-Hour Facility



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The Clinician Petition Procedure



- Required documents may be delivered via facsimile or electronic transmission
- Personal appearance not required

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

If the affiant

- Is authorized to perform the first commitment exam (is a “commitment examiner”),
 - 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 may file the examination and affidavit forms by delivering copies through facsimile or electronic transmission
- **Must mail originals within 5 days to the clerk of superior court**



Authorized Commitment Examiner

- A physician,
- A PhD psychologist with a health services provider certificate, or
- Any other health or mental health professional who is **certified** by the NC Secretary of HHS to perform the first examination for involuntary commitment

G.S. 122C-3(8a), G.S. 122C-263.1

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

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

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, the commitment examiner must complete and submit both forms



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Commitment Examiner—Identifies the recommended commitment on Exam Form

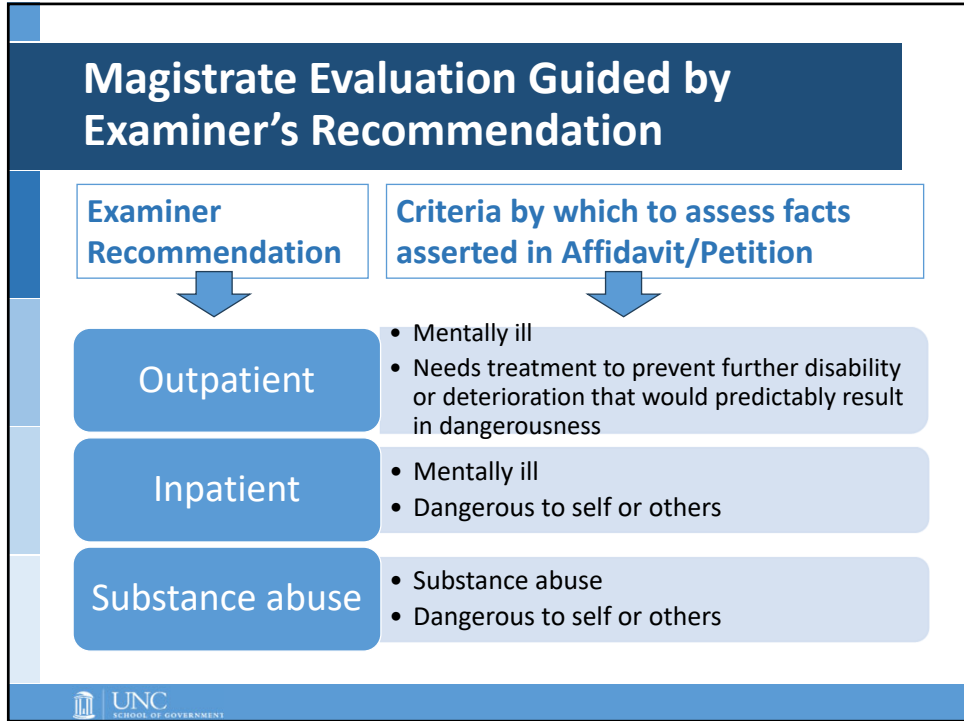
Section III: Recommendation—page 4 of Examination Form

- Inpatient commitment
- Outpatient commitment
- Substance abuse commitment

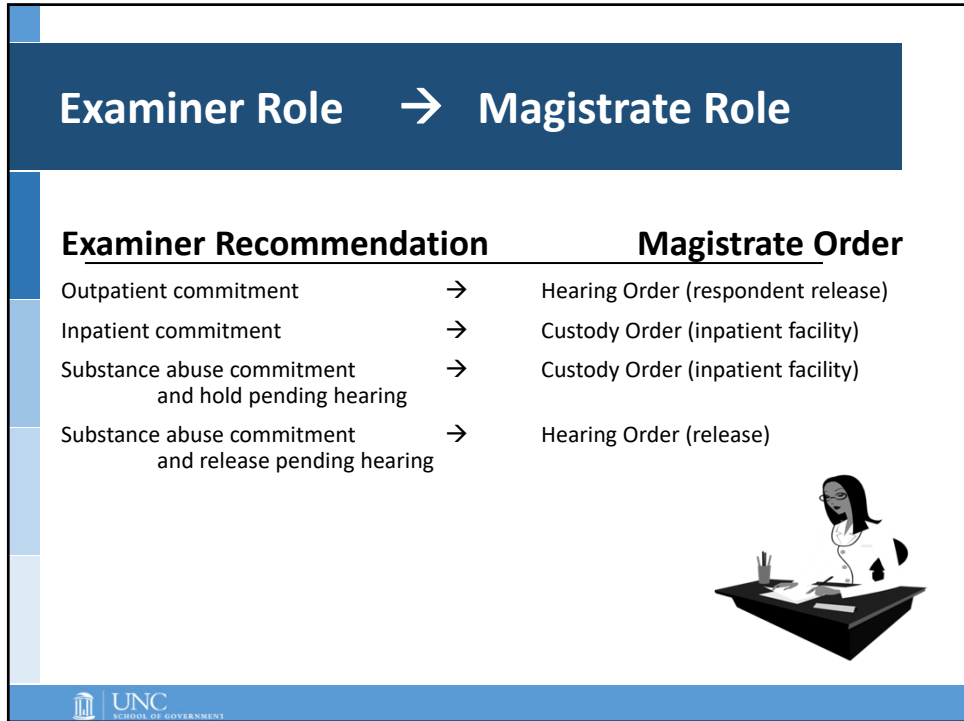
SECTION III - RECOMMENDATION FOR DISPOSITION	
<input type="checkbox"/>	Inpatient Commitment for _____ days (respondent must be mentally ill and dangerous to self or others)
<input type="checkbox"/>	Outpatient Commitment (respondent must meet ALL of the first four criteria outlined in Section I, Outpatient)
	Proposed Outpatient Treatment Center or Physician: (Name) _____ (Address and Phone Number) _____
<input type="checkbox"/>	Substance Abuse Commitment (respondent must meet both criteria outlined in Section I, Substance Abuse)
<input type="checkbox"/>	Release respondent pending hearing - Referred to: _____
<input type="checkbox"/>	Hold respondent at 24-hour facility pending hearing - Facility _____



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Hearing Order—AOC-SP-305

STATE OF NORTH CAROLINA	
_____ County	In The General Court Of Justice Superior Court Division
IN THE MATTER OF: <small>Name And Address Of Respondent</small>	FINDINGS AND ORDER INVOLUNTARY COMMITMENT PHYSICIAN-PETITIONER RECOMMENDS OUTPATIENT COMMITMENT G.S. 122C-261
NOTICE: <i>This form is to be used instead of the Findings And Custody Order (AOC-SP-302) only when the petitioner is a physician or psychologist who recommends outpatient commitment or release pending hearing for a substance abuser.</i>	
FINDINGS	
The petitioner in this case is a physician/eligible psychologist who has recommended outpatient commitment/substance abuse commitment with the respondent being released pending hearing.	
The Court finds from the petition in the above matter that there are reasonable grounds to believe that the facts alleged in the petition are true and that the respondent is probably:	
<input type="checkbox"/> mentally ill and in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness.	
<input type="checkbox"/> a substance abuser and dangerous to himself/herself or others.	
ORDER	
It is ORDERED that a hearing before the district court judge be held to determine whether the respondent will be involuntarily committed.	

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If Clinician Petitioner Recommends Inpatient Commitment

The magistrate shall issue an order (AOC-SP-302B) to

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

To take the respondent into custody and transport to a 24-hour facility for custody, examination, and treatment pending hearing

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Summary: Commitment Examiner Petition Process

1. Examination and Petition → Magistrate
2. Magistrate issues Custody Order
2. Custody and transport to 24-hour Facility

The Seven-Day Period

Steps Following First Exam—

If the commitment examiner recommends 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.

G.S. 122C-261(d)(4) and -263(d)(2).

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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
 - Examiner must report this fact to clerk of court
 - Proceedings must be terminated. G.S. 122C-263(d)(2).
- New commitment proceedings may be initiated
 - Requires *new* petition
 - Requires *new* examination if petitioner is clinician
 - Requires *new* custody order

Inpatient Hearings

If a respondent is subject to a series of successive custody orders at the site of the first examination (due to the 7-day termination rule), the hearing shall be held within 10 days after the day that the respondent is taken into custody under the most recent custody order.

G.S. 122C-268(a)

Incapable to Proceed

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Incapacity to Proceed Standard

- “[W]hen by reason of *mental illness or defect* he is unable to understand the nature and object of the proceedings against him, to comprehend his own situation in reference to the proceedings, or to assist in his defense in a rational or reasonable manner.” G.S. 15A-1001.

Mental Illness

Mental Defect

- S.L. 2023-114 (1/1/2025): . . . by reason of mental disorder, *intellectual disability*, neurological disorder, traumatic or acquired brain injury, or developmental immaturity . . .

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Statutory Definitions

- Mental illness—an illness which so lessens the capacity of the individual to use self-control, judgement, and discretion in the conduct the individual's affairs and social relations as to make it necessary or advisable for the individual to be under treatment, care, supervision, guidance, or control.
- Intellectual disability—a developmental disability characterized by significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested before age 22.

G.S. 15A-1003

- When a defendant is found to be *incapable of proceeding*, the presiding judge, upon such additional hearing, if any, as he determines to be necessary, *shall* determine whether the defendant meets the criteria for involuntary commitment under Part 7 of Article 5 of Chapter 122C of the General Statutes.
- There are two kinds of commitment set forth in Part 7 of Article 5 of G.S. 122C:
 - Outpatient commitment, and
 - Inpatient commitment.

The Criteria for Commitment

1. **Inpatient commitment**—*mentally ill* + dangerous to self or others
2. **Outpatient commitment**—*mentally ill* + based on psychiatric history, in need of treatment to prevent further disability or deterioration that would predictably result in dangerousness

1. mental illness
2. dangerous to self
3. dangerous to others



❖ “Mental defect” or intellectual disability + dangerousness is not a basis for IVC

Incapable to Proceed (ITP)

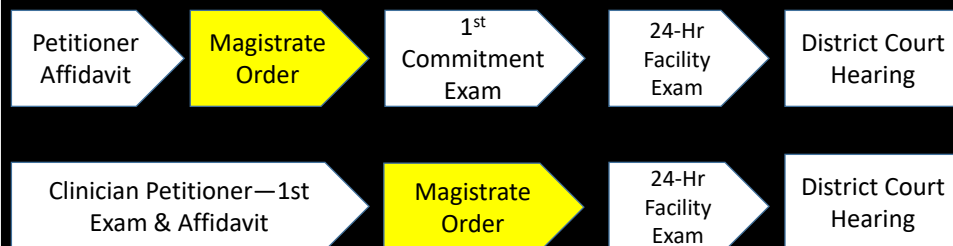


If the judge determines defendant meets IVC criteria, he or she “shall make **findings of fact** and **issue an order** in the same manner, upon the same grounds and with the same effect as an order issued” by a magistrate pursuant to G.S. 122C-261.

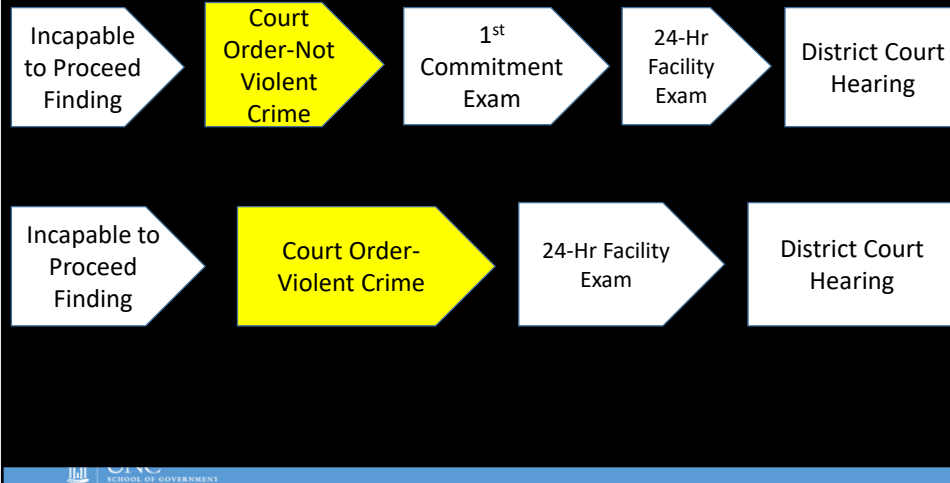
If Order Issued (AOC-SP-304B)

- Proceedings thereafter are in accordance with Part 7 of Article 5 of Chapter 122C of the General Statutes
- If the defendant was charged with a violent crime, including a crime involving assault with a deadly weapon,
 - the judge’s custody order shall require a law enforcement officer to take the defendant directly to a 24-hour facility described in G.S. 122C-252, and
 - defendant cannot be released thereafter from IVC without an IVC court hearing.

Overview of Typical “Civil” Commitment Procedure—Two Procedural Pathways



Overview of Commitment Procedure—For Incapable to Proceed Individuals



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Reasonable Grounds to Believe

The *knowledge of facts* that would lead a reasonable person of ordinary intelligence and prudence to *believe* the respondent probably meets the commitment *criteria*.



The judge “*shall* make **findings of fact** and issue an order in the same manner, upon the same grounds and with the same effect as an order issued” by a magistrate pursuant to G.S. 122C-261.

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STATE OF NORTH CAROLINA

County _____

In The General Court Of Justice
 District Superior Court Division

File No. _____

IN THE MATTER OF
 Name And Address Of Respondent _____

**INVOLUNTARY COMMITMENT
 CUSTODY ORDER
 DEFENDANT FOUND
 INCAPABLE TO PROCEED
 (For Offenses Committed On Or After Dec. 1, 2013)**

Date Of Birth* _____ Race* _____ Sex* _____

*Date of birth, race, and sex are collected so that this information may be transmitted to NICS in the event of a qualifying finding under G.S. 14-409.43(a)(5).

G.S. 15A-1003, -1004; 122C-261, -262, -263

FINDINGS

The respondent has been charged in File No. _____ with a criminal offense in the above named county and has been found incapable of proceeding to trial under G.S. 15A-1002. The Court considered the opinion of _____ (name of forensic evaluator) in the report dated _____ (list date of report) as evidence of incapacity to proceed. A copy of the evaluator's report is attached.

Based on the evidence presented, the Court finds that there are reasonable grounds to believe that the respondent probably has a mental illness and is either dangerous to self or others **or** in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness in that (insert appropriate findings) _____

In addition, the Court finds that the respondent

1. probably has an intellectual disability, in that (insert appropriate findings) _____

2. is charged with a violent crime in violation of G.S. _____, in that (insert appropriate findings) _____

NOTE TO JUDGE: if this finding is made, you must designate a law enforcement agency below to take custody of the defendant upon release from treatment.

ORDER

Attaching is not the same as incorporating into findings of fact

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NOTE TO JUDGE: if this finding is made, you must designate a law enforcement agency below to take custody of the defendant upon release from treatment.

ORDER

To The Sheriff Of _____ County:

1. The Court ORDERS you to take the above named respondent into custody and transport the respondent:

a. to a local person authorized by law to conduct an examination, for examination. (Use when **not charged with a violent crime**)

b. directly to the 24-hour facility named below for temporary custody, examination and treatment pending a district court hearing. (Use when charged with a violent crime)

2. The Court further ORDERS that you deliver a copy of the forensic evaluation report referenced in the Findings above, by the forensic evaluator named above, to the 24-hour facility named below.

To The Director Of The 24-Hour Facility Named Below:

The Court ORDERS you to deliver a copy of the forensic evaluation report referenced above to the Assistant Attorney General and the Special Counsel at the program where the respondent is to receive capacity restoration and that report is ordered released to them.

Notice To Hospital, Institution, 24-Hour Facility:

Criminal charges are still pending against the respondent. If defendant-respondent is released he/she must be released to the law enforcement agency named below. If the defendant-respondent is not charged with a violent crime and no law enforcement agency is specified, you may release him/her to whomever you think appropriate. **You must examine the defendant-respondent to determine whether he/she has gained the capacity to proceed to trial prior to releasing him/her from custody.** A report of the examination must be provided to the court pursuant to G.S. 15A-1002.

Name Of Law Enforcement Agency _____

Name And Address Of 24-Hour Facility _____ Date _____

Any 24-hour facility designated by NC DHHS for involuntary commitment respondents

Signature Of Judge _____

Or Following Facility Designated By Area Authority: _____ Name Of Judge (type or print) _____

NOTE: Use AOC-SP-910 for involuntary commitment if defendant found not guilty by reason of insanity.
 (Over)

AOC-SP-304B, Rev. 10/19, © 2019 Administrative Office of the Courts

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The 24-Hour Facility for Mental Illness or Substance Abuse

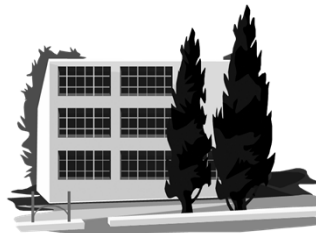


UNC
SCHOOL OF GOVERNMENT

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24-Hour Inpatient Facility for IVC

- Provides treatment for mental illness or substance abuse in a structured living environment for a period of 24 consecutive hours or more.
- Performs the **second commitment examination**.
- Where respondent is held pending hearing.
- Must be designated by NC DHHS for the custody and treatment of involuntary clients.



UNC
SCHOOL OF GOVERNMENT

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Second Examination at 24-Hour Facility

1. Examination
 - Within 24 hours of presentation
 - By a physician (or qualified professional for SA commit.)
 - Cannot be same physician who completes 1st exam or emergency certificate
2. Recommendation
 - Inpatient → hold and treat pending hearing
 - Outpatient → release
 - Substance abuse → hold and treat or designate other treatment pending hearing
 - Criteria not met → release

24-Hr Exam—Violent Crime

If the custody order states that the respondent was charged with a violent crime, including a crime involving assault with a deadly weapon, and that he was found incapable of proceeding, the physician

- Shall examine the respondent
- May not release the respondent until ordered to do so following the district court hearing.

G.S. 122C-266(b)

Reporting to the Clerk of Court

The findings of the physician and the facts on which they are based must be in writing and sent to the clerk of superior court by reliable and expeditious means.

G.S. 122C-266

- To the clerk of court for the county of the 24-hour facility if the recommendation is inpatient or substance abuse commitment
- To the clerk of court for the county where the custody order originated if the recommendation is
 - release based on a finding of no criteria,
 - release based on a finding of outpatient commitment, or
 - released based on a finding of SA commitment and recommended release.

Duties of Clerk of Superior Court

- Upon receipt of an examiner's findings that R meets criteria for outpatient commitment, calendar hearing and notify respondent and proposed outpatient provider.
- Upon receipt of 24-hr. facility examiner's finding that R meets criteria for inpatient commitment, assign counsel, calendar a hearing, and notify respondent and counsel.
- Upon receipt of an emergency certificate, submit the certificate to the Chief District Court Judge for review within 24 hours.

Commitment Hearing-Violent Crime

- Clerk must notify chief district court and district attorney of county where defendant found incapable
- Upon motion of any interested party, shall be moved to county of where respondent found incapable to proceed when convenience of witnesses and ends of justice would be promoted
- DA may represent the State's interest at the hearing
- If commitment is ordered, the order must show whether commitment proceedings were initiated as a result of violent offender being found incapable of proceeding
- 15 days before any discharge of a committed respondent, the physician must notify clerk of proposed discharge and clerk shall schedule rehearing and give notice as above

G.S. 122C-268(c), -269(c), -271(b), -277(b)



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Release and Discharge

- Pending the hearing, if the attending physician determines that the respondent no longer meets the criteria for either outpatient or inpatient commitment,
 - she shall release the respondent and notify the clerk of court who must terminate the proceedings
- At any time the attending physician determines that a committed respondent is no longer in need of inpatient commitment,
 - she shall discharge the respondent and notify the clerk of court of discharge or,
 - if respondent meets outpatient commitment criteria, ask the clerk of court for an outpatient commitment hearing
- Exceptions for insanity acquittees and criminal defendants charged with violent conduct



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No IVC Discharge W/O Capacity Exam and Report

- If respondent has been committed to either inpatient or outpatient treatment after being found in capable of proceeding,
- The respondent shall not be discharged from the custody of a 24-hour facility, or no outpatient commitment case shall be terminated,
- Until the respondent has been examined for capacity to proceed and a report filed with the clerk of court pursuant to 15A-2002.

G.S. 122C-278



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Order of Commitment

Findings and Order



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Findings Specific to Outpatient Commitment—On the Order:

- Make findings of fact as to the availability of outpatient treatment from a treatment provider who has agreed to accept the respondent as a client of outpatient treatment services.
- *Identify* the outpatient treatment provider responsible for managing the commitment
- If the provider will be providing the treatment pursuant to a contract with an LME/MCO, *identify* the LME/MCO.
 - An LME/MCO contracted provider shall not be designated on commitment order as the outpatient treatment provider unless respondent is eligible for services through the LME/MCO or otherwise qualifies for services offered by the provider

Findings for Any Commitment Order

1. The court shall find by clear, cogent, and convincing evidence that the respondent is *mentally ill* and *dangerous* to self or others, and
2. The court shall record the facts that support its findings.

G.S. 122C-268(j)

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.

Source: NC General Statutes 122C-3

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Dangerous to Self

Within the relevant past, the individual has:

1. Acted in a way to show unable to care for self + reasonable probability of serious physical debilitation in the near future unless adequately treated is given—or
2. Attempted or threatened suicide + reasonable probability of suicide unless adequate treatment is given—or
3. Attempted or engaged in self-mutilation + reasonable probability of serious self-mutilation unless adequate treatment is given

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Dangerous to Others

Within the relevant past, the individual has:

1. Inflicted, attempted, or threatened serious bodily harm + reasonable probability of conduct repeating—or
2. Created a substantial risk of serious bodily harm + reasonable probability of conduct repeating—or
3. Engaged in extreme destruction of property + reasonable probability of conduct repeating

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Ultimate Findings

Find by clear, cogent, and convincing evidence that the respondent is mentally ill and dangerous to self or others. G.S. 122C-268(j).

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CONCLUSIONS

Based on the above findings, the Court concludes that the respondent:

- 1. has a mental illness.
- 2. does not have a mental illness.
- 3. in addition to having a mental illness, also has an intellectual disability.
- 4. is dangerous to self to others.
- 5. is not dangerous to self or others.
- 6. (only for nondangerous individuals with mental illnesses) is capable of surviving safely in the community with available supervision from family, friends, or others; and based on respondent's psychiatric history, the respondent is in need of treatment in order to prevent further disability or deterioration which would predictably result in dangerousness to self or others; and, that the respondent's inability to make an informed decision to voluntarily seek and comply with recommended treatment is caused by:
 - the respondent's current mental status.
 - the nature of the respondent's mental illness.

ORDER

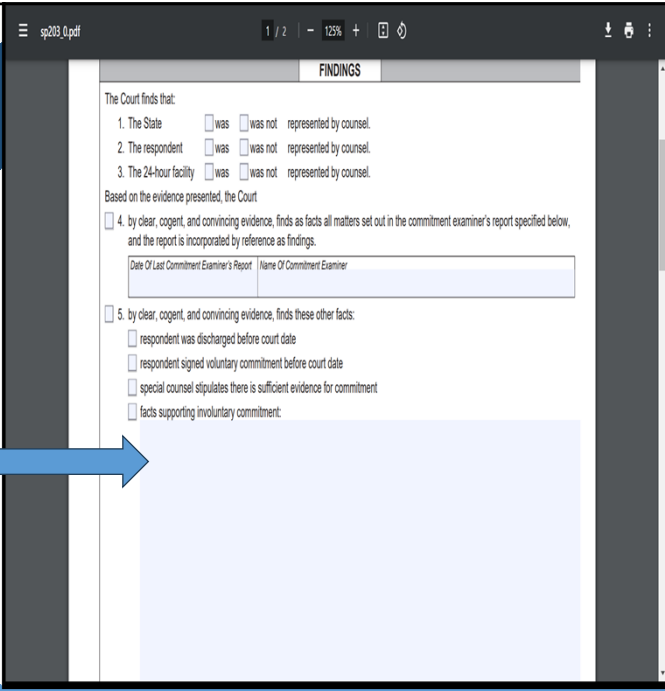
It is ORDERED that:

- 1. the respondent be committed/recommitted to the inpatient 24-hour facility named below for the period specified.
- 2. the respondent be committed/recommitted to outpatient commitment under the supervision and management of the center/physician named below for the period specified.
 - the respondent may be held at the 24-hour facility where he/she is now being held, for up to 72 hours in order for the facility to notify the designated outpatient center of respondent's treatment needs.

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Findings

Record the facts that support your conclusions.
G.S. 122C-268(j)



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Appellate Review

1. Whether there was any competent evidence to support **the facts recorded in the order** and
2. Whether the trial court's ultimate findings . . . were supported by **the facts recorded in the order**. *In Re J.P.S.*, 264 N.C.App. 58, 61.
 - We are required to take the trial court's findings of fact as they stand w/o reference to any other information contained in the record and we cannot infer findings from the record evidence that the trial court did not make. *In Re C.G.* 383 N.C. 224,240-41 (2022).

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Appellate Review of District Court Order

Conclusions of Law



Findings of Fact



Evidence

MI and Dangerousness—Ultimate Findings of Fact

Do the court's findings of fact recorded in the order support its conclusions of law? (*Whatley* 224 N.C.App. at 271.)

Is there any competent evidence to support the findings of fact recorded in the order?

Trial Court—In Re K.H.

- Psychiatrist testimony:
 - 63 yr. old female with history of schizophrenia
 - Originally brought to hospital homeless, eating raw meat, and carrying her feces around in a bag
 - Presented with persecutory delusions
 - Was malnourished
- Trial findings of fact: Respondent
 - Suffers from schizophrenia, delusions, malnourishment
 - Unable to care for herself in the community
 - Interrupted doctor's testimony
 - Testimony was rambling and incoherent

Appellate Court—In Re K.H.

- While the record evidence was sufficient to support these findings . . . These findings are only sufficient to support the trial court's ultimate findings that respondent had a mental illness and was unable to care for herself.
- None of these findings have anything to do with the probability of respondent suffering serious physical debilitation in the near future.

Dangerous to Self –Lack of Self-Care Ability

A two-prong test that requires a finding of:

- a lack of self-care ability regarding one's daily affairs, and
- a probability of serious physical debilitation resulting from the more general finding of lack of self-caring ability. *In re Monroe*, 49 N.C.App. 23 (1980).

In Re Whatley, Trial Court Findings

- Respondent was exhibiting psychotic behavior that *endangered her and her newborn child*. She is bipolar and was experiencing a manic stage.
- She was initially noncompliant in taking her medications but has been compliant the past 7 days.
- Respondent continues to exhibit disorganized thinking that causes her not to be able to *properly care for herself*. She continues to need medication monitoring.
- Respondent has been *previously* involuntarily committed

Physician Report Incorporated By Reference

- Patient admitted [with] psychosis while taking care of her two-month old son.
- She has a [history of] Bipolar [disorder].
- She remains paranoid, disorganized, intrusive.
- She has very poor insight [and] judgment and needs continued stabilization.
- Tells me that she does not plan to follow up as an outpatient.

In Re Whatley, 224 N.C. App. 267 (2012)

Danger to self—

Trial court's findings do not demonstrate that there was a "reasonable probability of [respondent] suffering serious debilitation within the near future."

We hold that the trial court's findings of fact are insufficient to support its conclusions that respondent presented a danger to herself and others



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Commitment Criteria

There is a reasonable probability of the individual suffering serious physical debilitation in the near future . . .

Previous episodes of dangerousness, when applicable, may be considered when determining reasonable probability of physical debilitation . . .

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-appropriate 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:

- acted in such a way as to show that
 - 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
 - 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
- attempted suicide or threatened suicide and there is a reasonable probability of suicide unless adequate treatment is given; or
- injured himself or attempted to injure 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:

- 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
- 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
- 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.

SOURCE: NC General Statutes § 122C-3

MAR BATTI, Associate Professor (2009)



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Commitment Criteria

There is a reasonable probability of the individual suffering serious physical debilitation in the near future .

Behavior that is so grossly irrational . . . or other evidence of severely impaired insight and judgment creates a prima facie inference . . .

Criteria for Involuntary Commitment in North Carolina

Mental Illness (Adults)
an illness that so impairs 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-appropriate 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 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:

- acted in such a way as to show that
 - 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 treatment, personal or medical care, shelter, or self-protection and safety, and
 - 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
- attempted suicide or threatened suicide and there is a reasonable probability of suicide unless adequate treatment is given, or
- 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:

- 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
- 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
- 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.

Sources: NC General Statutes 122C-3

Mark Botts, Associate Professor (2009)

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Resources

- Mark Botts
 - 919.962.8204 office
 - 919.923.3229 mobile
 - botts@sog.unc.edu
- Online Commitment Law Training
 - <https://www.sog.unc.edu/resources/microsites/mental-health>
 - [Involuntary Commitment Law--Online Training Program](#)
 - [Part 1-Commitment Criteria](#)
 - [Part 2-Commitment Procedure](#)

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