

# Involuntary Commitment Law and Procedure

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## Judicial College Program for Magistrates

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## Procedure—Key Issues

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- Lay person petition:
  - Getting sufficient facts on paper
  - Helping petitioner understand the process
- Physician/psychologist petition
  - Checking petition for completion
  - Checking facts for sufficiency
  - Requiring the examination form

## The Petition—General Rules

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- Anyone with knowledge may petition
- Petitioner must appear personally
- Jurisdiction is in the county where respondent resides or is found
- Must include facts sufficient to support allegations

## Standard for reviewing petition

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Reasonable grounds to believe that the facts alleged in the petition are true and that the respondent probably meets the criteria for commitment. GS 122C-261(b).

## “Just the facts, Ma’am”

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Statute requires 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).

## In re Ingram Petition

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“Respondent has strange behavior and is irrational in her thinking. Leaves home and no one knows or her whereabouts, and at times spends the night away from home. Accuses husband of improprieties.”

## Class Discussion

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### Consequences of In re Ingram and Not Following the Law

## Procedure in Response to Lay Petitioner

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- If the magistrate finds that the commitment criteria are met—for either outpatient, inpatient, or substance abuse commitment—the magistrate must issue custody order

## Explaining Next Steps to Petitioner

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- Next Steps According to the Statute
- Other Useful Information
  - Law enforcement protocol on restraint
  - Likely wait time at community hospital
- Contact Information
  - Other resources/options for petitioner if the commitment process terminates at the first examination

## Physician Petition

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- A physician or psychologist may avoid appearing before the magistrate if he or she has
  - personally performed the required statutory examination of the respondent, and
  - executed the affidavit before an official authorized to administer oaths

## In re Ingram Case

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Where statute requires oath and requirement not met, person involuntarily committed is deprived of liberty without legal process. Because commitment statutes provide for a drastic remedy, those that use them must do so with "care and exactness." Quoting Samons, 9 NC App. 490 (1970)

## Physician Petition

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- Emergency room physician petitions the magistrate, checking box # 1 that says, "Mentally ill and dangerous to self or others or mentally ill and in need of treatment in order to prevent further disability and deterioration. . ."
- Physician writes in the fact section of petition: "Patient is behaving in a bizarre manner. Confused. Poor judgment, unclear if suicidal."

## Physician Petition

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- Due process requires neutral officer to determine reasonable grounds exist for initial deprivation of liberty. *In re Reed*, 30 N.C. App. 227 (1978)
- Neutral officer designated by state legislature in North Carolina is the magistrate or clerk of court

## Procedure with Physician Petition

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If the petitioner recommends outpatient commitment and the magistrate finds probable cause to believe the respondent meets the criteria for outpatient commitment, the magistrate must issue an order that a hearing be held to determine whether the respondent will be committed

## Procedure with Physician Petition (continued)

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If the petitioner recommends inpatient commitment and the magistrate finds probable cause to believe that the respondent meets the criteria for inpatient commitment, the magistrate must issue an order for transportation to a 24-hour facility designated by the state

## Physician Petition

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In the catchment area of particular LMEs (local management entities or area authorities), licensed clinical social workers, psychiatric nurses, and clinical addictions specialists certified by the LME may avoid personal appearance when submitting a petition



## Procedure for Mental Retardation

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- If magistrate finds respondent, in addition to being mentally ill, is also probably MR
  - Must contact area authority before issuing custody order
- Area authority designates facility where R is to be taken

## Determining Mental Retardation

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- Historical information needed
- Not possible to determine MR from behavior during a mental health crisis
  - Did problems related to intelligence and functioning begin before age 22?
  - Has a doc. or psych. said respondent has MR?
  - Attended special education classes for MR students?
  - Received special services for persons with MR e.g., sheltered wkshop or group home for MR persons?

## Emergency Commitment - Mental Illness

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- Criteria
  - mental illness + danger to self or others
  - immediate hospitalization needed to prevent harm to self or others
- Procedure
  - anyone may transport to physician/psychologist for examination
  - examiner's verified statement authorizes transport to 24-hour facility—form DMH 5-72-01-A
  - magistrate bypassed

## Emergency Procedure - Substance Abuse

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- Criteria
  - substance abuser + danger to self or others
  - violent and requires restraint
  - delay would likely endanger life or property
- Procedure
  - officer may take into custody and petition magistrate—form AOC-SP-909M
  - magistrate order authorizes transport directly to 24-hour facility
  - local exam bypassed

## Other Transportation Orders

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- Transfer between 24-hour facilities (AOC-SP-222)
- Failure to comply with substance abuse commitment (AOC-SP-223)