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Involuntary Commitment

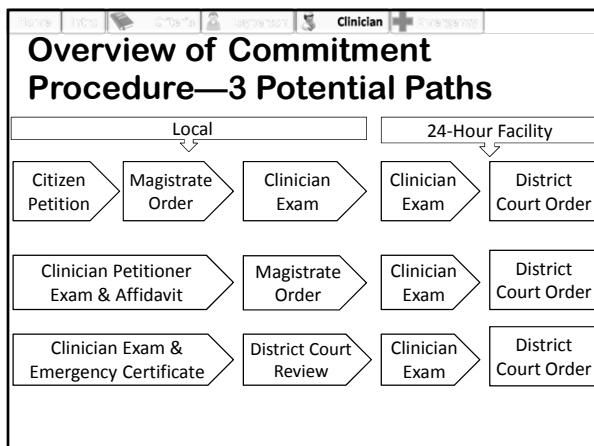
**2013 NC Magistrates' Fall Conference
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Objectives

1. Quick procedural review
2. Two new laws affecting clinician petition
3. Two orders not commonly requested
4. Seven-day termination of custody order



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Procedure for the Clinician Petitioner

Authorized Clinicians

- Physicians
- Health services provider psychologists
- Licensed clinical social workers, psychiatric nurses, and clinical addictions specialists that are individually authorized ("pilot" or "waiver" professionals)

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Requesting Involuntary Commitment

Petitioner **Petition** **Magistrate**

1. Examines the respondent
2. Attests before a notary public

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Which of the following are true about the procedure for qualified clinicians?

- A) To avoid appearing before a magistrate, a clinician petitioner must examine the respondent.
- B) To avoid appearing before a magistrate, a clinician petition must be notarized.
- C) A qualified clinician who cannot examine the respondent can use the procedure for laypersons.
- D) All of the above.

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Custody-GS 122C-261, -263

The magistrate shall issue an order for transportation to or custody at a 24-hour facility.

- Upon receipt of the custody order a law enforcement officer shall take the respondent into custody . . . and take her to a 24 hour facility designated by the State for the custody and treatment of involuntary clients.

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24-Hour Facility

- A facility whose primary purpose is to provide mental health or substance abuse treatment
- Provides a structured living environment and services for 24 consecutive hours or more
- Is designated by the State to receive and detain involuntary patients pending a court hearing

Listing of facilities:
<http://www.ncdhhs.gov/mhddsas/services/IVC/index.htm>

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Twenty-Four Hour Facility Petitions S.L. 2013-308 (H 635)

24-Hour Facility

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graph LR
    A[24-Hour Facility] --> B[Clinician Petitioner Exam & Affidavit]
    B --> C[Magistrate Order]
    C --> D[Clinician Exam]
    D --> E[District Court Order]
  
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- Patient respondent must be at 24-hr facility
- Clinician petitioner must be at the same 24-hr facility
- Magistrate may issue custody order:
 - To clinician petitioner or designee
 - By fax or electronic transmission of scanned order
- Only if clinician petitioner or designee has been trained

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Telemedicine G.S. 122C-263(c)

- First examination—the respondent may be either in the physical presence of the examining clinician or examined utilizing telemedicine equipment and procedures.
- “Telemedicine”—the use of two-way, real-time interactive audio and video between . . . to provide health care when . . . participants . . . are in different geographic locations.

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Statewide Telepsychiatry Program S.L. 2013-360 (S 402)

- Telepsychiatry: Acute MH or SA assessment, diagnosis or treatment delivered by means of two-way, real-time interactive audio and video by a consulting provider at a “consultant site” to a patient at a “referring site.”
 - Consultant site—site where consulting provider is located
 - Referring site—hospital where patient is located
 - Consulting provider—physician or other health care provider licensed to provide acute MH or Sa care
- Statewide implementation by Jan. 1, 2014

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Additional Orders

1. Transfer Order—AOC-SP-222
2. Committed Substance Abuser Fails to Comply with Treatment—AOC-SP-223

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Transfer between 24-Hour Facilities

1. Form AOC-SP-222--request and order to transport respondent from one 24-hr. facility to another
 - Applies to respondents held pending hearing and those held after hearing under a commitment order
2. Facility
 - Obtains authorization from receiving facility
 - Notifies client or legally responsible person
 - Submits request to clerk of court or magistrate
3. Clerk or magistrate issues order to law enforcement

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Managing SA Commitments

1. Substance abuse commitment (SAC)--The area authority or physician responsible for the respondent's commitment may prescribe or administer reasonable and appropriate treatment
 - either on an outpatient basis or in a 24-hour facility.
2. If respondent fails to comply with all or part of the prescribed treatment,
 - The "area authority or physician" shall make all reasonable effort to solicit compliance

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Managing SA Commitments

- If Respondent "fails to comply" after reasonable efforts to solicit compliance, the "area authority or physician" may request the clerk or magistrate to order the respondent taken into custody for the purpose of examination.
 - Form AOC-SP-223
- Law enforcement shall take respondent into custody and take him/her immediately to the provider designated on the form for an examination

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Options During Wait Time Following The First Examination

After 1st exam and recommendation of inpatient commitment:

1. If 24-hour facility not
 - Immediately available or
 - Medically appropriate
2. Respondent may be temporarily detained

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Change in Respondent's Status

1. If at any time a physician or psychologist determines respondent no longer meets the inpatient criteria:
 - Respondent must be released (proceedings terminated), or
 - Physician may recommend outpatient commitment
2. Decision to release or recommend outpatient commitment must
 - Be made in writing (conduct exam and use exam form)
 - Reported to the clerk of superior court by most reliable and expeditious means

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Seven Day Limit

1. 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
2. New commitment proceedings may be initiated
 - Requires new petition
 - Requires new examination if petitioner is clinician
 - Requires new custody order

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013**

**SESSION LAW 2013-308
HOUSE BILL 635**

AN ACT TO (1) ALLOW A CLERK OR ASSISTANT OR DEPUTY CLERK OF SUPERIOR COURT OR A MAGISTRATE TO ISSUE BY FACSIMILE OR ELECTRONIC MAIL TRANSMISSION AN INVOLUNTARY INPATIENT COMMITMENT CUSTODY ORDER TO A PETITIONING PHYSICIAN, ELIGIBLE PSYCHOLOGIST, OR DESIGNEE AT A TWENTY-FOUR-HOUR FACILITY WHEN THE RESPONDENT IS ALREADY PHYSICALLY PRESENT AT THE TWENTY-FOUR-HOUR FACILITY, (2) ESTABLISH PROTOCOLS FOR THE TRAINING OF PHYSICIANS, ELIGIBLE PSYCHOLOGISTS, OR DESIGNEES, AND (3) DIRECT THE SECRETARY OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO REVIEW AND REVISE THE RULES DESIGNATING FACILITIES FOR THE CUSTODY AND TREATMENT OF INVOLUNTARY CLIENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 122C-261(d) reads as rewritten:

- "(d) If the affiant is a physician or eligible psychologist, ~~the~~ all of the following apply:
- (1) The affiant may execute the affidavit before any official authorized to administer oaths. This affiant is not required to appear before the clerk or magistrate for this purpose. This affiant shall file the affidavit with the clerk or magistrate by delivering to the clerk or magistrate the original affidavit or a copy in paper form that is printed through the facsimile transmission of the affidavit. If the affidavit is filed through facsimile transmission, the affiant shall mail the original affidavit no later than five days after the facsimile transmission of the affidavit to the clerk or magistrate to be filed by the clerk or magistrate with the facsimile copy of the affidavit.
 - (2) This affiant's examination shall comply with the requirements of the initial examination as provided in G.S. 122C-263(c).
 - (3) If the physician or eligible psychologist recommends outpatient commitment and the clerk or magistrate finds probable cause to believe that the respondent meets the criteria for outpatient commitment, the clerk or magistrate shall issue an order that a hearing before a district court judge be held to determine whether the respondent will be involuntarily committed. The physician or eligible psychologist shall provide the respondent with written notice of any scheduled appointment and the name, address, and telephone number of the proposed outpatient treatment physician or center. The physician or eligible psychologist shall contact the local management entity that serves the county where the respondent resides or the local management entity that coordinated services for the respondent to inform the local management entity that the respondent has been scheduled for an appointment with an outpatient treatment physician or center.
 - (4) If the physician or eligible psychologist recommends inpatient commitment and the clerk or magistrate finds probable cause to believe that the respondent meets the criteria for inpatient commitment, the clerk or magistrate shall issue an order for transportation to or custody at a 24-hour facility described in G.S. 122C-252, provided that if a 24-hour facility is not immediately available or appropriate to the respondent's medical condition, the respondent may be temporarily detained under appropriate supervision



and, upon further examination, released in accordance with G.S. 122C-263(d)(2).

(5) If the affiant is a physician or eligible psychologist at a 24-hour facility described in G.S. 122C-252 who recommends inpatient commitment; the respondent is physically present on the premises of the same 24-hour facility; and the clerk or magistrate finds probable cause to believe that the respondent meets the criteria for inpatient commitment, then the clerk or magistrate may issue an order by facsimile transmission or may issue an electronically scanned order by electronic transmission to the physician or eligible psychologist at the 24-hour facility, or a designee, to take the respondent into custody at the 24-hour facility and proceed according to G.S. 122C-266. Upon receipt of the custody order, the physician or eligible psychologist at the 24-hour facility, or a designee, shall immediately (i) notify the respondent that the respondent is not under arrest and has not committed a crime but is being taken into custody to receive treatment and for the respondent's own safety and the safety of others, (ii) take the respondent into custody, and (iii) complete and sign the appropriate portion of the custody order and return the order to the clerk or magistrate either by facsimile transmission or by scanning it and sending it by electronic transmission. The physician or eligible psychologist, or a designee, shall mail the original custody order no later than five days after returning it by means of facsimile or electronic transmission to the clerk or magistrate. The clerk or magistrate shall file the original custody order with the copy of the custody order that was electronically returned.

a. Notwithstanding the provisions of this subdivision, a clerk or magistrate shall not issue a custody order to a physician or eligible psychologist at a 24-hour facility, or a designee, if the physician or eligible psychologist, or a designee, has not completed training in proper service and return of service. As used in this subdivision, the term "designee" includes the 24-hour facility's on-site police security personnel.

b. The Department of Health and Human Services shall cooperate and collaborate with the Administrative Office of the Courts and the UNC School of Government to develop protocols to implement this section, including a procedure for notifying clerks and magistrates of the names of the physicians, psychologists, and designees who have completed the training. The Secretary of the Department shall oversee implementation of these protocols.

(6) If the clerk or magistrate finds probable cause to believe that the respondent, in addition to being mentally ill, is also mentally retarded, the clerk or magistrate shall contact the area authority before issuing the order and the area authority shall designate the facility to which the respondent is to be transported.

(7) If a physician or eligible psychologist executes an affidavit for inpatient commitment of a respondent, a second physician shall be required to perform the examination required by G.S. 122C-266."

SECTION 2. G.S. 122C-261(e) reads as rewritten:

"(e) ~~Upon~~ Except as provided in subdivision (5) of subsection (d) of this section, upon receipt of the custody order of the clerk or magistrate or a custody order issued by the court pursuant to G.S. 15A-1003, a law enforcement officer or other person designated in the order shall take the respondent into custody within 24 hours after the order is signed, and proceed according to G.S. 122C-263. The custody order is valid throughout the State."

SECTION 3. The Secretary of the Department of Health and Human Services shall review and update its list of facilities designated under G.S. 122C-252 as facilities for the custody and treatment of involuntary clients. The Secretary shall ensure that each designation identifies the specific units or areas of the 24-hour facility to which the designation applies and includes all units or areas necessary to facilitate the orderly and safe movement of a respondent from one unit or area to another.



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.

