

On the Civil Side

A UNC School of Government Blog

<https://civil.sog.unc.edu>

Legislative Changes to Ex Parte Proceedings for the Provision of Emergency Services to Disabled Adults



This entry was contributed by Meredith Smith on September 30, 2025 at 12:20 pm and is filed under Adult Protective Services.

On November 1, 2025, legislative changes to North Carolina adult protective services (APS) law take effect pursuant to [Session Law 2025-27, Part V](#). There are three primary changes reflected in two new statutes, G.S. 108A-106.1 and -106.2.

1. Magistrates are authorized to accept for filing petitions for the provision of emergency services to disabled adults when the clerk's office is closed and the petitioner requests the court enter an ex parte emergency services order. S. 108A-106.1.
2. Certain "Authorized Magistrates" (defined below) may hear petitions for the provision of emergency services to disabled adults and enter ex parte emergency services orders. G.S. 108A-106.2(a), (b).
3. District court judges and Authorized Magistrates may authorize ex parte emergency services orders telephonically under certain circumstances. G.S. 108A-106.2(c).

This post explains each of these legislative changes in greater detail.

Types of APS Court Orders and the Scope of the Legislative Changes

If, after receiving a report that a disabled adult is subject to abuse, neglect, or exploitation, a county department of social services (DSS) determines that the disabled adult is in need of protective services and lacks the capacity to consent to services, DSS may obtain a court order authorizing the provision of services to the disabled adult. G.S. 108A-105(a). There are three primary types of APS court orders authorizing services to a disabled adult under G.S. Chapter 108A, Article 6:

1. an order authorizing protective services pursuant to G.S. 108A-105,
2. an order authorizing emergency services pursuant to G.S. 108A-106, and
3. an ex parte order authorizing emergency services pursuant to G.S. 108A-106(d).

The changes enacted by S.L. 2025-27 impact the third category of orders: ex parte orders for the provision of emergency services. These orders are typically sought by DSS when a disabled adult is in need of emergency services, an emergency (as defined in G.S. 108A-101(g)) exists, and there is a likelihood that the disabled adult may suffer irreparable injury or death if the entry of the order is delayed. G.S. 108A-106(d). No notice is required to the disabled adult or any other person prior to the entry of the ex parte order by the court. G.S. 108A-106(d). To enter an ex parte order for the provision of emergency services, the court must find based on the evidence presented that there is reasonable cause to believe that:

1. the respondent is a disabled adult (as defined in G.S. 108A-101(d));
2. the respondent is subject to abuse (as defined in G.S. 108A-101(a)), neglect (as defined in G.S. 108A-101(m), or exploitation (as defined in G.S. 108A-101(j));
3. the respondent is in need of protective services (as defined in G.S. 108A-101(e));
4. the respondent lacks the capacity to consent (as defined in G.S. 108A-101(l));
5. an emergency (as defined in G.S. 108A-101(g)) exists and there is a likelihood the respondent may suffer irreparable injury or death if the emergency services order is delayed; and
6. no other person authorized by law or order to give consent for the respondent is available and willing to arrange for emergency services and reasonable attempts have been made to locate interested parties and secure emergency services from them or their consent to services for the respondent. G.S. 108A-106(a), (d).

Legislative Change #1: After-Hours Filing of the Petition for an Ex Parte Order

Prior to the changes enacted by Session Law 2025-27, there was no clear path for DSS to file a petition seeking entry of an ex parte emergency services order after-hours. Effective November 1, 2025, DSS may file the petition seeking ex parte relief with the magistrate when the clerk's office is closed. The magistrate is required to accept these ex parte petitions for filing. G.S. 108A-106.1(a).

Upon receipt, the magistrate must note the date of the filing on the petition by placing their file stamp on it. G.S. 108A-106.1(a). Any magistrate who accepts a petition for filing must deliver the petition to the clerk's office for processing as soon as the office is open for business. G.S. 108A-106.1(b).

The magistrate's authority to accept these after-hours filings is limited to when DSS files a petition for emergency services seeking ex parte relief. G.S. 108A-106.1(b). Because the ex parte order is preliminary relief that must later be followed by a hearing on the emergency services

petition, the request for ex parte relief must always be paired with a petition for emergency services and cannot exist on its own. See G.S. 108A-106.

In practice, DSS will complete the top portion of the North Carolina Administrative Office of the Courts Form-CV-770 petition by either:

1. checking all three boxes (seeking an order using the same petition authorizing (i) protective services, (ii) emergency services, and (iii) ex parte emergency services), or
2. checking only the second two boxes (seeking an order using the same petition authorizing only (i) emergency services and (ii) ex parte emergency services).

Legislative Change #2: Authorized Magistrates' Entry of Ex Parte Orders

Once DSS files the emergency services petition seeking an ex parte order, DSS will likely seek to have a judicial official rule on the petition as soon as possible. Prior to November 1, 2025, only a district court judge could rule on these petitions and enter an ex parte emergency services order.

On and after November 1, 2025, under a new G.S. 108A-106.2(a), certain "Authorized Magistrates" may also hear these petitions and enter ex parte orders. A magistrate is an "Authorized Magistrate" if both of the following are true:

1. the chief district court judge authorized the magistrate to hear ex parte petitions and enter ex parte orders, and
2. prior to the hearing, the magistrate determines that at the time the party is seeking the ex parte order (a) the district court is not in session and (b) a district court judge is not and will not be available to hear the motion.

If these conditions are met, an Authorized Magistrate may enter the ex parte order regardless of whether the clerk's office is open or closed.

The chief district court judge may choose to authorize one or more magistrates, and practically, this may be done in an administrative order. See G.S. 108A-106.2(a). The chief may also set out in the administrative order what "is not and will not be available" means in reference to a district court judge. For example, the order might specify that a judge is unavailable whenever district court is not in session, whenever the clerk's office is closed, or during specific weekend hours.

If the magistrate who receives the petition for filing when the clerk's office is closed is not an Authorized Magistrate, then the magistrate who received the filing will need to contact an Authorized Magistrate or district court judge to rule on the ex parte petition as soon as possible.

Requirements if Ex Parte Relief is Granted by a Judge or Authorized Magistrate

If the grounds for the ex parte petition are met, then the judge or Authorized Magistrate

1. enters an order authorizing emergency services and
2. identifies in the order who is authorized to provide or give consent to emergency services. G.S. 108A-106(b).

The ex parte order may only authorize such emergency services as are necessary to remove the conditions creating the emergency. G.S. 108A-106(b). The ex parte order authorizing emergency services must contain a show-cause notice directing persons entitled to service of the emergency services petition to appear immediately or at any time up to and including the time for the hearing of the petition for emergency services and show cause, if any exists, for the dissolution or modification of the ex parte order. G.S. 108A-106(d). Those entitled to notice of the emergency services petition include the disabled adult, the disabled adult's spouse, or if none, to the disabled adult's children or next of kin, and the disabled adult's guardian, if any. G.S. 108A-106(d).

Additional Required Steps Upon Entry of an Order Granting or Denying the Request for an Ex Parte Order

Two additional steps must occur regardless of whether the judicial official grants or denies the request for an ex parte emergency services order.

First, the judicial official must determine whether to appoint an attorney to represent the disabled adult in the proceeding. If the disabled adult, in the determination of the judicial official, lacks the capacity to waive the right to counsel, then a guardian ad litem must be appointed pursuant to Rule 17 of the N.C. Rules of Civil Procedure and rules adopted by the Office of Indigent Defense Services. G.S. 108A-105(b).

Second, a hearing on the emergency services petition must be scheduled promptly. If the ex parte order is entered when the clerk's office is closed, then the magistrate may determine the hearing date and include that date on the notice of hearing. The emergency services hearing should be scheduled as soon as possible, but in any event, it must be scheduled for a date that is no more than 14 days from the entry of the ex parte emergency services order. *See* G.S. 108A-106(d) (providing that an emergency services order may authorize services for up to 14 days). The disabled adult and others entitled to notice must receive notice of the filing of the emergency services petition and the hearing on the petition at least 24 hours prior to the emergency services hearing. G.S. 108A-106(d).

Legislative Change #3. Telephonic Authorizations for Ex Parte Orders

The final change to APS law effectuated by Session Law 2025-27 impacts how a judicial official may give authorization for an ex parte order. If a petition seeking entry of an ex parte emergency services order is filed at night when the clerk's office is closed, a judge or Authorized Magistrate may not be available in person or by videoconferencing technology to rule on the petition. A new G.S. 108A-106.2(c) provides that, as of November 1, 2025, all authorizations for ex parte orders for emergency services may be made by telephone when other means of communication are impractical. This includes authorizations for ex parte orders given by district court judges as well as Authorized Magistrates at any time and is not limited to ex parte orders entered when the clerk's office is closed.

Before a judge or Authorized Magistrate may give authorization for the order by telephone, they must be provided with a copy of the petition. The petition may be delivered to them by hand delivery, facsimile, electronic means such as email, or any other appropriate method. Any order entered pursuant to telephonic communication must bear:

1. the name and the title of the director,
2. the name and the title of the district court judge or Authorized Magistrate issuing the ex parte order,
3. the hour and date of the telephonic authorization, and
4. the signature and the title of the clerk or magistrate receiving the authorization and entering the order and who accepted the petition for filing. G.S. 108A-106.2(c).

Conclusion

Session Law 2025-27 recognizes there are situations when immediate court intervention for a disabled adult who is being abused, neglected, or exploited is critical and may be sought by DSS through an ex parte emergency services order. Effective November 1, 2025, there are pathways that enable DSS to respond more swiftly to these cases by (i) permitting after-hours filing of ex parte petitions when the clerk's office is closed, (ii) expanding the range of judicial officials who may enter ex parte orders, and (iii) authorizing telephonic approval for ex parte orders by those officials when other methods are impractical.

This entry was tagged with the following terms: department of social services, district court judge, dss, DSS attorney, magistrate.

Meredith Smith

Meredith Smith joined the School of Government in 2013. Her work focuses on the areas of law where clerks of superior court exercise judicial authority.

