

Involuntary Commitment

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SCHOOL OF GOVERNMENT

**Magistrate Conference
Sept. 20, 2023**

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Topics

- Documenting sufficient information in the Affidavit and Petition to support issuance of the Custody and Transportation Order
- Understanding “dangerous” as defined by statutory law
- Informing the petitioner of the next steps in the process
- Return of service questions

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Spoiler Alert

- The following examples are not legally sufficient
 1. SI with plan
 2. Patient has been off psych meds and reports SI
 3. Intoxicated; suicidal
 4. Bipolar psychosis and paranoid; making suicidal statements
 5. Patient reports SI, auditory/visual hallucinations
- Dementia can fall within the definition of “mental illness”

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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
County
In The General Court of Justice
SHERIFF COURT DIVISION

IN THE MATTER OF
Name of Respondent

AFFIDAVIT AND PETITION FOR INVOLUNTARY COMMITMENT

State Bar No. of Affiant (Judge, Clerk, Trial Judge) Date of Filing Date of Hearing Date of Decision

I, the undersigned affiant, being that 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:
owner of the vessel

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 probably result in danger to others.
 2. in addition to being mentally ill, respondent is also "mentally impaired" pursuant to G.S. 122C-201.
 3. a substance abuser and dangerous to self or others.

The facts upon which this opinion is based are as follows: (Check box, set concerns it support A.C. 122C-201)

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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*.



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Reasonable Grounds to Believe

- For the magistrate or clerk to have reasonable grounds to believe, he or she must first have *knowledge of facts* that lead to that belief.
- To have knowledge of facts that would give reasonable grounds to believe, the *affiant must assert facts* (signs and symptoms) in the affidavit.
- Mere conclusions or opinions do not suffice to give the magistrate or clerk reasonable grounds to believe, for the magistrate cannot simply adopt the belief of others. Rather, *the magistrate must come to his or her own belief* based on facts asserted in the affidavit.

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The Magistrate's Role

The diagram illustrates the Magistrate's role. It shows a stack of papers labeled 'Petition' followed by a plus sign, then a book labeled 'Legal Criteria'. To the right of the book is a 'no' symbol (a circle with a diagonal slash) over the word 'belief', indicating that belief is not the basis for the magistrate's decision.

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Discussion

- "Patient exhibits bizarre behavior,"
- "Respondent is suicidal"
- "Patient is mentally ill"
- "Respondent is dangerous"
- "Suicidal"

These are opinions or conclusions that, alone, do not reveal the factual basis upon which they are based and, therefore, are unhelpful to magistrate who must determine whether they believe the patient is mentally ill and dangerous to self or others (must come to their own conclusion based on the presentation of factual information.)

- As such, they are not appropriate for the fact section of the Affidavit and Petition for Involuntary Commitment.

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Information Must Be Factual

Facts	
Conclusions (Opinions)	Descriptive Facts
<ul style="list-style-type: none"> ▪ Violent ▪ Threatening ▪ Aggressive ▪ Assaulted someone 	<ul style="list-style-type: none"> • 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

The diagram shows a table with two columns: 'Conclusions (Opinions)' and 'Descriptive Facts'. The 'Conclusions' column lists general terms like 'Violent', 'Threatening', 'Aggressive', and 'Assaulted someone'. The 'Descriptive Facts' column lists specific actions: 'Hit boss with a wrench', 'Said he would cut brother while he slept', 'Pushed Mom off the porch', and 'Held hammer in air saying he was going to bust mother's head'. A 'no' symbol is placed over the 'Conclusions' column, indicating that such opinions are not factual information.

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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).

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In Re C.G.—Commitment Examiner Affidavit and Petition

- Respondent “presents [as] psychotic and disorganized . . . [Respondent’s] ACTT team being unable to stabilize his psychosis in the outpatient treatment.”
- “He is so psychotic he is unable to effectively communicate his symptoms and *appears to have been neglecting his own care.*”

In Re C.G., 278 N.C. App. 416 (2021)

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Understanding the Criteria



Read the statutory definitions!

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The Criteria for Commitment

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



1. mental illness
2. substance abuse
3. dangerous to self
4. dangerous to others

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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 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 an unobstructed 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, reckless, or that the individual is unable to control, behavior that is grossly unresponsive to the correction, or other evidence of severely impaired mental and judgment creates an inference that the individual is unable to care for himself or herself.
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 that 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 that conduct will be repeated; or
3. engaged in extreme destruction of property and there is a reasonable probability that that 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: NCGS 124-100.1(b)(1)-(3)

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Dangerous to Self

Within the relevant past, the individual has:

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

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Relevant Past

- Acts are within the relevant past if they occur close enough to the present time to have probative value on the question whether the conduct will continue
- Acts that are part of—or connected to—the current or ongoing episode, incident, or situation that help you assess what is happening and what is likely to happen if adequate treatment is not given

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Question

If an individual is unable to exercise self-control, judgment, and discretion in the conduct of her daily responsibilities and social relations, or to satisfy her need for nourishment, personal or medical care, shelter, self-protection, or safety, then the individual meets the statutory definition for “dangerous to self” for purposes of involuntary commitment.

- Yes (that’s True)
- No (that’s False)

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Commitment Criteria

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

Criteria for Involuntary Commitment in North Carolina

Mental Illness (MIAI)
A person has a mental illness if the individual is unable to exercise judgment, and discretion in the conduct of his or her daily responsibilities and social relations, or to satisfy her need for nourishment, personal or medical care, shelter, self-protection, or safety.

Mental Illness (MIAS)
A person has a mental illness if the individual is unable to exercise judgment, and discretion in the conduct of his or her daily responsibilities and social relations, or to satisfy her need for nourishment, personal or medical care, shelter, self-protection, or safety.

Substance Abuse
A person has a substance abuse disorder if the individual is unable to exercise judgment, and discretion in the conduct of his or her daily responsibilities and social relations, or to satisfy her need for nourishment, personal or medical care, shelter, self-protection, or safety.

Dangerous to self
Without the relevant past, the individual has:
1. a serious and imminent risk of:
a. self-harm or suicide, or
b. the need for medical, surgical, or dental care, or
c. the need for shelter, food, or clothing, or
d. the need for medical, surgical, or dental care, or
e. the need for shelter, food, or clothing, or
f. the need for medical, surgical, or dental care, or
g. the need for shelter, food, or clothing, or
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s. the need for shelter, food, or clothing, or
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u. the need for shelter, food, or clothing, or
v. the need for medical, surgical, or dental care, or
w. the need for shelter, food, or clothing, or
x. the need for medical, surgical, or dental care, or
y. the need for shelter, food, or clothing, or
z. the need for medical, surgical, or dental care, or

Dangerous to others
The individual has a dangerousness to others if:
1. the individual has a serious and imminent risk of:
a. physical harm to another person, or
b. the need for medical, surgical, or dental care, or
c. the need for shelter, food, or clothing, or
d. the need for medical, surgical, or dental care, or
e. the need for shelter, food, or clothing, or
f. the need for medical, surgical, or dental care, or
g. the need for shelter, food, or clothing, or
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v. the need for medical, surgical, or dental care, or
w. the need for shelter, food, or clothing, or
x. the need for medical, surgical, or dental care, or
y. the need for shelter, food, or clothing, or
z. the need for medical, surgical, or dental care, or

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Dangerous to Self—Context and Specificity

Hanna lives in a nursing home. She is 85 years old and suffers dementia. She can't remember where she is, doesn't know what day it is, and doesn't know her family. She can't remember to take her medication and is too frail to bathe and dress without assistance.

1. Is Hannah mentally ill?
 2. Is Hannah dangerous to self?
- Read the definition carefully: “. . . Unable, without the care, supervision, and the continued assistance of others *not otherwise available*, to exercise self-control, judgment, and discretion . . .”

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Suicide

attempt
or
threat
+
reasonable probability of suicide

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Sample Case

- Patient with history of paranoid schizophrenia.
- Patient came to ED trying to get back on psychiatric medication. Wants to speak to MD about medications.
- Presented to Hospital ED with “flight of ideas and paranoia.”
- Afraid his girlfriend is trying to kill him.
- Named other people he thinks are trying to kill him. Believed cab driver was plotting to kill him.
- Began to cry and became hysterical.
- Patient “endorses” “suicidal ideation.”

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Suicidal Ideation

“Suicidal ideations” (SI), means suicidal thoughts or ideas.

- A broad term used to describe a range of contemplations, wishes, and preoccupations with death and suicide.
- Varies in intensity, duration, and character.
- Health records often document SI in a binary yes/no fashion
- But it encompasses everything from fleeting wishes of falling asleep and never awakening to intensely disturbing preoccupations with self-annihilation fueled by delusions.
- Important for healthcare professionals to thoroughly assess and monitor the pattern, intensity, nature, and impact of SI on the individual

Suicidal Ideation, Bonnie Harmer, Sarah Lee, Truc vi H. Duong, Abdolreza Saadabadi

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Commitment Criteria

- Attempted or threatened suicide +
- Reasonable probability of suicide

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Criteria for Involuntary Commitment in North Carolina

Minor (16A-21)
The person does not have the capacity of free rational choice, self-control, judgment, and discretion to control his or her actions, and is unable to care for himself or herself or to take to himself, care, supervision, protection, or control.

Minor (16A-22)
A mental condition, which does not constitute a crime, that so impairs the individual's capacity to exercise self-control and judgment in the conduct of his activities and social interactions that it is a need of treatment.

Substantive basis
The professional must be able to establish another design to help or to suggest that problems or treatment is necessary, except in exceptional instances. Substantive basis may include a patient's history and background.

Diagnosis for self
When the criteria for the self-risk law:
1. used to such a step as to be self-risk.
2. the medical history, physical exam, symptoms, and the continued presence of self-risk or other factors, in order to self-control, judgment and discretion in the conduct of his or her activities and social interactions, are such that the individual is unable to care for himself or herself or to take to himself, care, supervision, protection, or control.

3. there is a reasonable probability of the self-risk or other factors, which the individual is unable to care for himself or herself or to take to himself, care, supervision, protection, or control, and judgment, unless an advance that the individual is unable to care for himself or herself or to take to himself, care, supervision, protection, or control, and there is a reasonable probability of self-risk or other factors, which the individual is unable to care for himself or herself or to take to himself, care, supervision, protection, or control.

Diagnosis for others
When the criteria for the self-risk law:
1. self-risk, attempted to self-risk, or threatened to self-risk, or other factors, which the individual is unable to care for himself or herself or to take to himself, care, supervision, protection, or control, and there is a reasonable probability of self-risk or other factors, which the individual is unable to care for himself or herself or to take to himself, care, supervision, protection, or control, and there is a reasonable probability of self-risk or other factors, which the individual is unable to care for himself or herself or to take to himself, care, supervision, protection, or control.

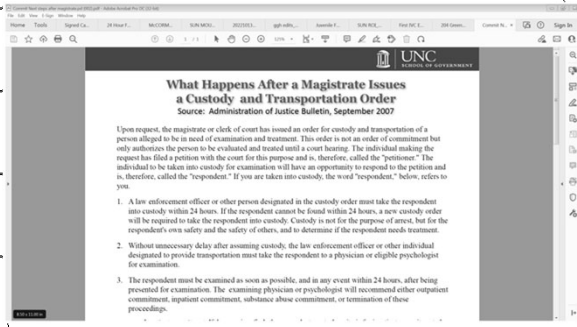
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Sample Case— “Passive” Suicidal Ideation

- Patient says she has been “very depressed” for the last 3 years, but it has “worsened lately.”
- Hopeless, sad, worried. Under eating. Difficulty falling asleep. Frequent waking. Decreased energy. She was tearful throughout and spoke of feelings of worthlessness.
- Says she “does not want to live anymore.”
- She first got depressed after separating from her husband 12 years ago. Attempted suicide then by taking pills. Then got therapy and medication, and depression got better.
- She just lost her job with a cleaning company
- Daughter recently asked her to move out of her house

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What Happens Next?



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Other Information

- Other useful information:
 - Law enforcement protocol on restraint
 - Likely wait time at community hospital
- Useful contact information
 - Other resources/options for petitioner if the commitment process terminates at the first examination

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Magistrates

- Do you know what resources are available in your county?
- Are you familiar with your county's "community crisis plan?"

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