



Due process



For Commitments:

- Right to hearing
- · Right to Counsel
- · Patient as decision
- Maker
- Right to judicial review

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CRITERIA FOR USE OF INVOLUNTARY PROCESS + DEFINITIONS

Must show an individual is Mentally ill/Substance abuser AND dangerous to <u>self</u> OR <u>others</u> within the relevant past.

DEFINITIONS:

Mental illness (Adult) = an illness that impairs judgment and self control to a degree that treatment or supervision is necessary or advisable.

Mental illness (Minor) = a mental condition (other than ID alone) that impairs ability to use age-adequate self control or judgment in activities or relationships to extent treatment is needed.

Substance Abuse = the pathological use or abuse of alcohol or orugs in a way that impairs personal, social or occupational functioning.

MORE DEFINITIONS

Danger to Self:

A person is deemed dangerous to him/herself when, within the relevant past, there is

Inability to care for self + a probability of serious physical debilitation,

OR

An attempt or threat of suicide + probability of suicide,

OR

Actual or attempted self-mutilation.

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Definitions continued

Danger to Others:

A person is deemed dangerous to others when, within the relevant past, the person has

Threatened, attempted, inflicted, or created a substantial risk of bodily harm + there is a probability of the conduct recurring,

OR

Engaged in extreme destruction of property + there is a probability of conduct recurring.

Previous episodes of **dangerousness to self** may be considered, when applicable, when determining reasonable probability of physical debilitation, suicide or self-mutilation.

Previous episodes of **dangerousness to others**, when applicable, may be considered when determining reasonable probability of future dangerous conduct.



IVC PROCEDURES

Three paths to Involuntary Commitment: Community Initiated, Clinician Initiated, and Emergency Certificate

Steps for **Community Initiated IVC**:

- An Affidavit and Petition for Involuntary Commitment may be initiated by any person who has knowledge that
- a. A person is mentally ill and dangerous to self or others, OR
- b. Is a substance abuser and is a danger to self or others.

Intellectual Disability ("I.D.") **alone** is no longer a criterion for involuntary commitment. Must fall within categories listed in G.S. 122C-263(d)(2).

2. A Petition is taken at magistrate's office or clerk of court's office and is sworn to.

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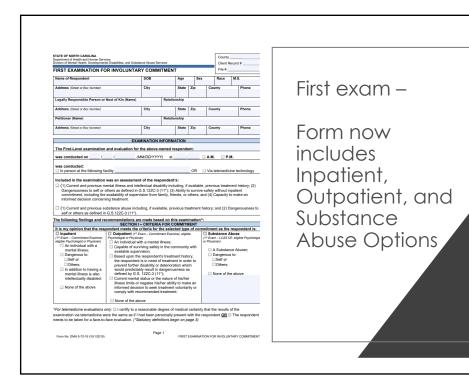
Community initiated IVC cont'd

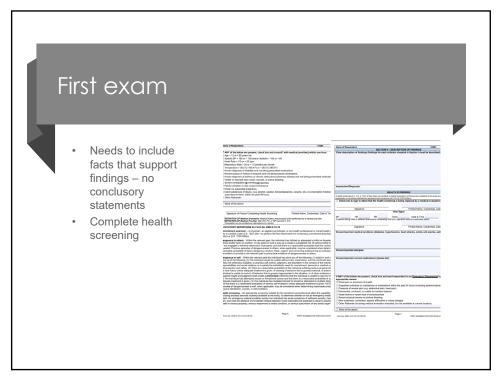
- 3. The Petition must contain facts to support a petitioner's belief that the individual, now the "respondent", meets criteria for commitment.
- 4. Magistrate satisfied that criteria for IVC are met issues a Findings and Custody Order allowing Respondent to be taken into custody for a first examination by a commitment examiner.
- 5. The Petition and Custody Order must be served on Respondent within 24 hours of issuance.
- 6. The time on the custody order starts the clock on deadline to District court hearing.

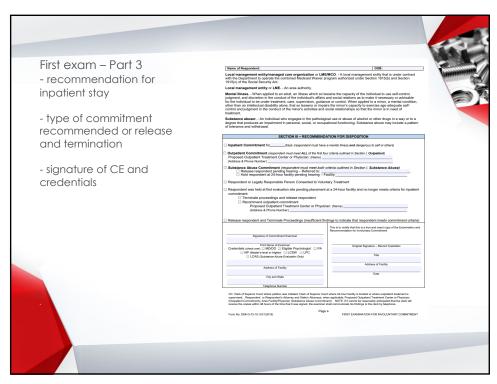
IVC PROCEDURES cont'd

Clinician initiated Petition -

- 1. An individual with behavioral health symptoms presents at hospital and is examined by a **commitment examiner ("CE")**, which is "a physician, an eligible psychologist, or any health professional or mental health professional who is certified under G.S. 122C-263.1 to perform the first examination for involuntary commitment." (e.g. LCSW, LCAS, Master's or higher NP, LPC, PA)
- 2. If the CE recommends inpatient level of treatment based on the first examination, he/she completes a Petition which is notarized and transmitted to the magistrate.
- 3. Magistrate issues a custody order allowing respondent to be taken into custody for transport to a 24-hour facility









IVC Procedures cont'd

Emergency Certificate – (mental illness)

Anyone, including law enforcement, who has knowledge of an individual who is subject to inpatient commitment and who requires immediate hospitalization to prevent harm to self or others, may transport the individual directly to an area facility for examination by a commitment examiner.

Upon examination by the CE, if the individual meets the criteria (mental illness + danger) and requires immediate hospitalization to prevent harm to self/others, the CE executes an affidavit certifying the reason for requiring immediate hospitalization.

The CE's affidavit is transmitted to the clerk of court and serves as the custody order, bypassing the magistrate review.

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IVC Procedures – Emergency Certificate (mental illness) cont'd

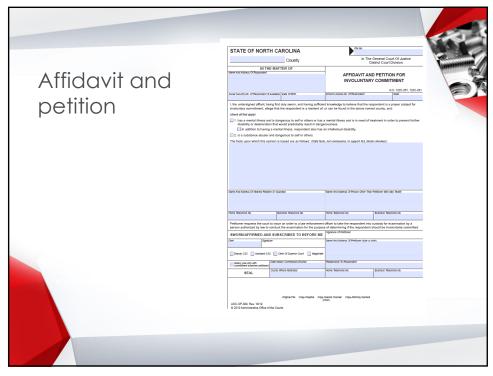
Respondents received at 24-hour facility must be examined by a second physician.

After receipt of notification that the District Court has determined reasonable grounds for this commitment, further proceedings shall be carried out in the same way as for all other respondents.

IVC Procedures cont'd

Emergency Certificate – (substance abuse)

- Criteria must exist for substance abuser and dangerous to self or others.
- He/she must be violent and require restraint and delaying intervention by seeking treatment would likely endanger life or property.
- A law enforcement officer takes the individual into custody, takes him/her before a magistrate or clerk, and swears that the individual meets the above criteria.
- The clerk or magistrate must find by clear, cogent and convincing evidence that the individual meets the criteria and can then order the respondent to be taken directly to a 24-hour facility.





Examples:

Legally sufficient factual basis for Petition -

"Respondent with long history of schizophrenia was found in early morning hours lying disrobed in the center of the road in subfreezing temperatures in a self-described purification ritual he says he learned telepathically. Mother states he has been off all medications for two weeks as part of a ritual. He has also refused food for three days. Without treatment, respondent will likely suffer physical debilitation."

Legally insufficient factual basis for Petition -

"Respondent with long history of mental illness and multiple hospitalizations stopped taking prescribed medications recently, began talking out of his head about traveling to California. He is a danger to himself and others and requires inpatient treatment."

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Legally Insufficient Petitions

Threshold legal document.

Defects in the Petition subject it to Motion to Dismiss, such as -

- · Conclusory statement and vague descriptions
- Incorrect dates/times
- · Failure to notarize

Dismissal is typically remedied with new Petition.

Always inspect all of the commitment documents for defects!

FINDINGS AND CUSTODY ORDER

County			In The General Court Of Justice District Court Division			
	THE MATTER OF					
Name And Address Of Respond			FINDINGS AN INVOLUNT (PETITIONER APPEAR	ARY COM	MMITME!	NT CLERK)
Social Security No. Of Responde	ent	Date Of Birth	Drivers License No. Of Responden	G.S. 122	2C-252, -261, -2 State	263, -281, -2
		I. FIND	DINGS			
true and that the respond (Check all that apply)	ent is probably:	ners or mentally ill and	asonable grounds to believe in need of treatment in order		,	
deterioration that v	would predictably res	ult in dangerousness. respondent probably is	also mentally retarded. (If th			
20 1(b) and (d) 2. a substance abuse						
			ODY ORDER			
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Findings and Custody Order Procedure

- The Order must be served on Respondent within 24 hours of issuance by magistrate.
- The Order authorizes detention of Respondent in an emergency room/department after the first exam but before admission to a 24-hour facility for up to 7 days if no bed is available.
- If the admission is untimely, the Order is invalid. Typically, the facility will initiate a new petition if the Respondent continues to meet criteria.
- The timing of the Petition and Custody Order must follow statutory chronology or is subject to a Motion to Dismiss!

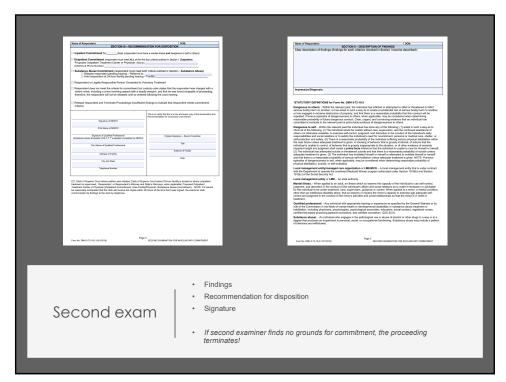


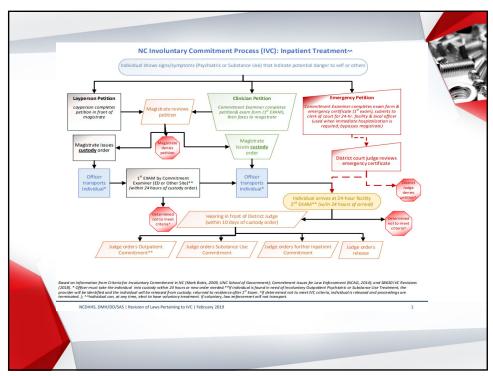
The 7-day Rule

- If a Respondent is detained in an ER/ED pursuant to an Order and no bed is available at the 24-hour facility, the CE MUST report this fact to the clerk and proceedings on that Petition and Order are terminated.
- The CE may initiate new proceedings prior to the expiration of the first 7-day period as long as the Respondent continues to meet criteria.
- "Affidavits filed in support of proceedings terminated pursuant to this subdivision shall not be submitted in support of any subsequent petitions for involuntary commitment." G.S. 122C-263(d)(2)
- And "If the affiant initiating new commitment proceedings is a commitment examiner, the affiant shall conduct a new examination and shall not rely upon examinations conducted as part of proceedings terminated pursuant to this subdivision."
- Unintended consequence of well-intentioned law is multiple 7day petitions with duplicate examinations.

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SECOND EXAM Second exam must be performed within 24 hours of admission to a 24-hour facility Cannot be performed by the same clinician who performed the first Must be performed by the same clinician who performed by a physician Must be performed by a physician





Prehearing outcomes

Discharge before hearing -

 The attending physician must release Respondents who no longer meet criteria for commitment, except those admitted under incapable-to-proceed status, which often occurs prior to the scheduled court hearing.

Continuances -

- Once admitted, Respondent's case may need to be continued for further evaluation.
- May only be continued one week at a time.

Not resisting/Not contesting -

 Respondents unable to fully understand their legal situation but unwilling to undergo a hearing, or those who agree with need for treatment may waive their right by not resisting or contesting commitment, whichever is applicable.

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Hearings

- Patients have the right to a District Court hearing no later than 10 days after being taken into custody on the most recent valid custody order.
- Counsel for the State/Hospital has the burden of proof by clear, cogent and convincing evidence that Respondent meets criteria for involuntary commitment.
- Respondent is represented by appointed counsel if indigent or retained counsel, who represents the express wishes of the client.



Hearings cont'd

- Must be held in an appropriate room at the facility where Respondent is being treated, or in judge's chambers, but NOT in a regular courtroom open to the public.
- · May be held virtually unless Respondent objects.
- Closed to the public unless Respondent requests otherwise.
- "Certified copies of reports and findings of commitment examiners and previous and current medical records are admissible in evidence, but the respondent's right to confront and cross-examine witnesses may not be denied." G.S. 122C-268(f)
- · Respondent may be called to testify.

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Role of Court

- · District Court judges rotate
- · Hears motions and argument of counsel
- Weighs evidence of mental illness or substance abuse and dangerousness
- If evidence of mental illness is clear/cogent/convincing, sets maximum initial commitment order
 - No hearing necessary to discharge before time is up*
 - Initial commitment: max 90 days
 - First rehearing: max 180 days
 - Second and subsequent rehearings: max 365 days
 - May order split commitments of inpatient treatment followed by outpatient commitment.
 - Substance abuse commitment is 180 days to appropriate treatment provider.

*except respondents committed as incapable to proceed.

Contents of the Court Order

"To support an inpatient commitment order, the court shall find by clear, cogent and convincing evidence that the respondent is mentally ill and dangerous to self or to others. The court **shall** record the facts that support its findings." G.S. 122C-268(j)

It is not enough to incorporate the last commitment examiner's report or check the boxes!

The court's factual findings must reflect the provisions in the definition of dangerousness:

- · Reasonable probability of serious physical debilitation
- Reasonable probability of suicide if untreated
- Reasonable probability of self-mutilation

 Reasonable probability of conduct creating risk of bodily harm to another being repeated

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Post-hearing outcomes

- Patient discharged before end of max commitment
 - Notice of commitment change
- Patient needs additional time
 - Request for hearing (5-76)
 - New "medical" (5-72 or 5-73)

STATE OF NORTH CA Department of Health a					
Facility Name:	Film #:				
Facility Address:	(Physical location)				
IN THE MATTER OF:	Respondent's Name:				
	Client Record Number:				
	Unit/Building/Ward (When Applicable): Date of Inputient Outputient Substance Abuse Commitment				
TO: Clerk of Superior (Court,County				
This is to certify that the	commitment status of the above-named respondent has changed due to the following:				
The respondent is no	longer in need of inpatient hospitalization and is unconditionally discharged on(date).				
The respondent no id	onger meets the criteria for outpatient substance abuse commitment and is discharged on				
The respondent is no	i longer in need of inpatient treatment and is conditionally released on(date) to be all discharge on(date).				
Conditions of release a	re				
☐The respondent ☐ o	escaped breached conditions of release on(date); and is discharged from an(date).				
☐The respondent or le	gally responsible person signed a consent for voluntary treatment on(date).				
The respondent was voluntary treatment on	admitted as a voluntary minor and has turned 18 years of age. The respondent signed a consent for (date).				
The respondent was Therefore, outpatient or	admitted to a 24-hour facility on an involuntary basis on(date). mmitment is terminated.				
The respondent has (date).	moved to another state or location of respondent is unknown so commitment is terminated on				
committed by	longer in need of inpatient treatment. The respondent is released from inpatient commitment and is the court to outpatient treatment for days on (date). The respondent was m the 24-hour facility on (date).				
The respondent is or inpatient hospi	a split commitment and is no longer in need of inpatient treatment. The respondent is released from talization and is committed to outpatient treatment fordays on(date).				
The respondent was (date).	transferred to in County on				
	red on(date).				
Other (Specify):					
Signature/Title	Date				
NOTE: If current a	status is Inpatient Commitment, signature must be that of Attending Physician. status is Outpatient or Substance Abuse Commitment, signature must be that of Responsible Professions				
	r Court where petition initiated (date), (Specify:) r Court where facility located (date), (Specify:) Court where objected or substance above commitment supervised (date).				
(opecin).	Medical Record Respondent and State's Attorney (date).				



Outpatient Commitment

- Court-ordered treatment of Respondent by a provider outside of the inpatient setting.
- LME/MCO contracts with the providers, "Outpatient treatment physician or center," who must be designated on outpatient commitment order.
- Appropriate when the court finds Respondent has a mental illness and
 - is capable of surviving safely in the community with support and supervision;
 - based on history, is in need of treatment to prevent deterioration that would predictably result in danger to self/others;
 - current mental status/nature of illness impairs ability to seek treatment on his/her own.
- Maximum period of outpatient commitment is 180 days.

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Resources

NC AOC Forms: https://www.nccourts.gov/documents/forms

UNC SOG Involuntary Commitment resources:

https://www.sog.unc.edu/resources/microsites/mental-

health/involuntary-commitment-resources-o

DHHS IVC Resources:

https://www.ncdhhs.gov/divisions/mhddsas/ivc

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