



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 an intellectual disability 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.



What Happens After a Magistrate Issues a Custody and Transportation Order

Upon request, a magistrate or clerk of court has issued an order for custody and transportation of a person alleged to be in need of examination and treatment. This is not an order of commitment. It authorizes only that the person to be evaluated and treated until a court hearing. The individual making the request has filed a petition with the court for this purpose and is called the "petitioner." The individual to be taken into custody for examination will have an opportunity to respond to the petition and is called the "respondent."

1. A law enforcement officer or other person designated in the custody order must take the respondent into custody within 24 hours. If the respondent cannot be found within 24 hours, a new custody order will be required to take the respondent into custody. Custody is not for the purpose of arrest, but for the respondent's own safety and the safety of others, and to determine if the respondent needs treatment.
2. Without unnecessary delay after assuming custody, the law enforcement officer or other individual designated to provide transportation must take the respondent to a physician or eligible psychologist for examination.
3. The respondent must be examined as soon as possible, and in any event within 24 hours, after being presented for examination. The examining physician or psychologist will recommend either outpatient commitment, inpatient commitment, substance abuse commitment, or termination of these proceedings.
 - *Inpatient commitment*: If the examiner finds the respondent meets the criteria for inpatient commitment, the examiner will recommend inpatient commitment. The law enforcement officer or other designated person must take the respondent to a 24-hour facility.
 - *Outpatient commitment*: If the examiner finds the respondent meets the criteria for outpatient commitment, the examiner will recommend outpatient commitment and identify the proposed outpatient treatment physician or center in the examination report. The person designated in the order to provide transportation must return the respondent to the respondent's regular residence or, with the respondent's consent, to the home of a consenting individual located in the originating county. The respondent must be released from custody.
 - *Substance abuse commitment*: If the examiner finds the respondent meets the criteria for substance abuse commitment, the examiner must recommend commitment and whether the respondent should be released or held at a 24-hour facility pending a district court hearing. Depending upon the physician's recommendation, the law enforcement officer or other designated individual will either release the respondent or take him or her to a 24-hour facility.
 - *Termination*: If the examiner finds the respondent meets neither of the criteria for commitment, the respondent must be released from custody and the proceedings terminated. If the custody order was based on the finding that the respondent was probably mentally ill, then the person designated in the order to provide transportation must return the respondent to the respondent's regular residence or, with the respondent's consent, to the home of a consenting individual located in the originating county.
4. If the law enforcement officer transports the respondent to a 24 hour facility, another evaluation must be performed within 24 hours of arrival. This evaluator has the same options as indicated in step 3 above. If the respondent is not released, the respondent will be given a hearing before a district court judge within 10 days of the date the respondent was taken into custody.

Involuntary Commitment

Mark Botts—UNC School of Government



Magistrate Conference
March 2024

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Topics

- Q & A on selected IVC topics
- Community crisis services plans
- Communication with the petitioner
- Emergency procedure
- Return of service questions

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Questions

- Can a magistrate's office tell persons appearing before them that they only accept petitions from mental health professionals?
- Can a magistrate tell a petitioner they must go to another county's magistrate?

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The Petition—GS 122C-261(a)

- Anyone with knowledge may petition
- Petitioner must appear personally
- Jurisdiction is in the clerk or magistrate in the county where the respondent resides or is found



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Questions

- Can you tell a petitioner that you will not issue a custody order because, “We know this kid, and this won’t help”
- Can you deny a petition on the basis that the respondent is already at a treatment facility?

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G.S. 122C-261(b)

If the clerk or magistrate finds reasonable grounds to believe that the facts alleged in the affidavit are true and that the respondent probably has a mental illness and is either (i) dangerous to self or dangerous to others, or (ii) in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness, the clerk or magistrate **shall** issue an order . . . to take the respondent into custody for examination by a commitment examiner.

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Commitment Criteria

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Criteria for Involuntary Commitment in North Carolina

Mental illness (adult)

An adult is a person who has the capacity of the individual in the self-control, judgment, and discernment, the conduct of the affairs and conduct, or to make or necessary arrangements for him to be under treatment care, requires a physician, or a court.

Mental illness (minor)

A mental illness, when then manifest in a minor, shall be a condition of the individual's capacity to receive appropriate treatment and to be placed in the custody of the parent and child welfare agency that is in need of treatment.

Substance abuse

The public health law is a disease of the body or the mind, in a way as to a degree that produces an impairment of the person's mental, or intellectual functioning. Substance abuse may include a pattern of drinking and/or smoking.

Dangerous to self

Within the rules that govern the individual's life:

1. such an individual may be the victim
 - a. he would be unable, with or without assistance, and the continued occurrence of other self-harmful conduct, to exercise self-control, judgment, and discernment in the conduct of the daily or professional and social activities, or to carry his load of responsibility, parental or marital care, child, or child protection and safety; and
2. there is a reasonable probability of the continuing or recurrent self-harm, within the next three months, unless treatment is given. Evidence that a person's mental, or intellectual, capacity that the individual is unable to control, behavior that is grossly inappropriate in the situation, or a that evidence of recently impaired insight and judgment occurs, in addition to that the individual is unable to care for himself, or
3. attempted suicide or threatened suicide and there is a reasonable probability of suicide, unless the person has been in a group, or
4. attempted, attempted or threatened to suicide, himself and there is a reasonable probability of suicide, unless the person has been in a group.

Persons appear to be dangerous to self, when applicable, may be committed when demonstrating the reasonable probability of future dangerousness, suicide, or self-harmful behavior.

Dangerous to others

Within the rules that govern the individual's life:

1. individual, attempted to inflict or threatened to inflict serious bodily harm on another and there is a reasonable probability that the conduct will be repeated, or
2. acted in a way that created a risk of death and of serious bodily harm to another and there is a reasonable probability that the conduct will be repeated, or
3. engaged in serious destruction of property and there is a reasonable probability that the conduct will be repeated.

Persons appear to be dangerous to others, when applicable, may be committed when demonstrating the reasonable probability of future dangerousness to others, or self-harmful behavior, or suicide, or serious injury to another, or the individual has committed a homicide in the relevant parts evidence of dangerousness to a child.

Revised: 06/11/2015

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Respondent at treatment facility

- Adolescent in the parking lot of a Facility Based Crisis Center is taking off his clothes, urinating on people, hitting, kicking, and spitting staff.
- Staff requests the magistrate issue a custody order as the sheriff refused to assist without one.
- The magistrate refused on the basis that the FBC is a crisis facility and should be able to manage the individual.

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Questions

- Who must you issue the custody order to?
- Can you issue the custody order to a law enforcement officer in another county?
- Can a law enforcement officer refuse to execute a custody order?
- Where should the officer take the respondent?

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Issuing the Custody Order

The magistrate shall issue the order to

- a law enforcement officer or
- any other person designated under G.S. 122C-251

to take the respondent into custody . . .

G.S. 122C-261

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Issuing the Custody Order

- Law-enforcement officer—a sheriff, deputy sheriff, police officer, State highway patrolman, or an officer employed by a city or county under G.S. 122C-302 (officers employed and trained to assist individuals who are intoxicated in public). G.S. 122C-3.
- Designated person—a person designated in the transportation plan of a city or county, adopted under G.S. 122C-251(g), to provide a part or all the transportation and custody required by the involuntary commitment process.

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County Transportation Plan

- Every county must adopt a plan for transportation of respondents in involuntary commitment proceedings.
- The plan may designate persons other than law enforcement officers to carry out all or part of the transportation and custody.
- Volunteers and public or private agency personnel other than law enforcement officers may be designated.

G.S. 122C-251(g).

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Can you issue the order to another county?

The custody order is valid throughout the State.

G.S. 22C-261(e)

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Custody—G.S. 122C-261(e)

Upon receipt of the custody order, the law enforcement officer shall take the respondent into custody within 24 hours after the order is signed



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Transportation—G.S. 122C-263



Without unnecessary delay, the officer shall take the respondent to a commitment examiner.

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Where?

To a facility or other location identified by the LME/MCO in the *community crisis services plan* adopted pursuant to G.S. 122C-202.2.

G.S. 122C-263(a)

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Community Crisis Services Plan



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Community Crisis Plans

NC's public mental health authorities, a.k.a., "LME-MCOs," are required by statute to create a "community crisis plan"

- developed with the participation of acute care hospitals, other first examination facilities, **law enforcement agencies**, and **magistrates**
- identifies **where** respondents shall be taken for the first exam
- includes county transportation plans that may identify "**designated persons**" to receive custody orders

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Community Crisis Plans

Must identify—for any non-law enforcement personnel designated in a County Transportation Plan—training that addresses the

- use of de-escalation strategies and techniques
- safe use of force and restraint
- respondent rights relative to involuntary commitment
- location of first examination sites, and
- completion and return of service.

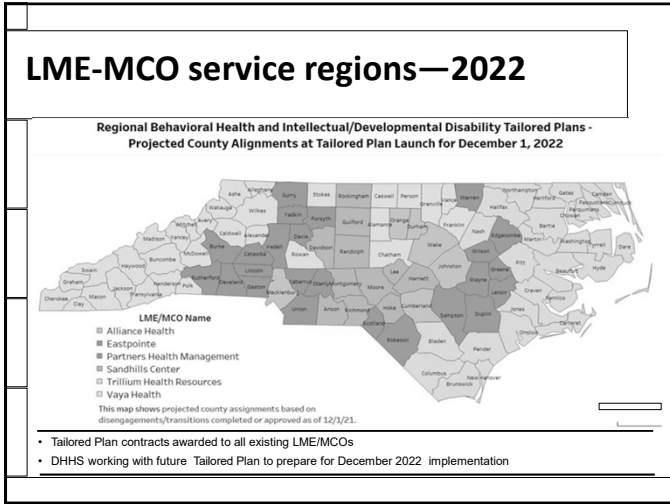
G.S. 122C-202.2

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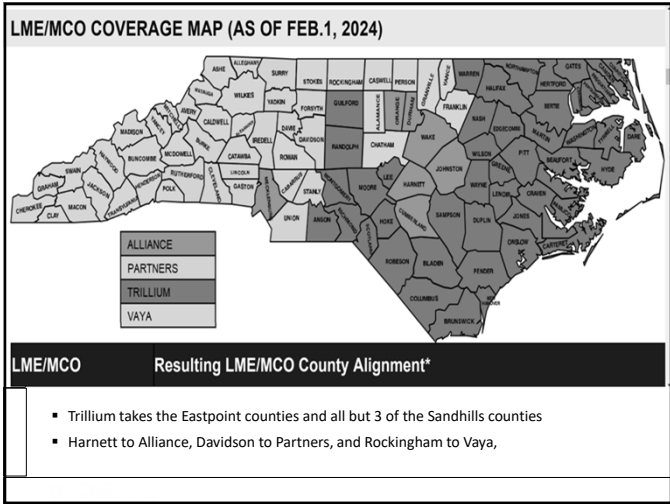
What is an LME-MCO?

- LME-MCO stands for local management entity-managed care organization.
- Provides community-based services to those with the most serious mental illness and those with the most severe substance use disorders.
 - Use a network of contracted service providers. (LME-MCOs do not provide services directly.)
 - Operate within a specified geographic area
 - Pay for services with public funds (Medicaid, State, County dollars)

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Communication with the Petitioner

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- What are you required to say?
- What may you say?

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If You Issue Custody Order AOC-SP-302A

The “magistrate shall provide the petitioner and the respondent, if present, with specific information regarding the next steps that will occur for the respondent.”

G.S. 122C-261(b)

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What Happens Next?

What Happens After a Magistrate Issues a Custody and Transportation Order
Source: Administration of Justice Bulletin, September 2007

Upon request, the magistrate or clerk of court has issued an order for custody and transportation of a person alleged to be in need of examination and treatment. This order is not an order of commitment but only authorizes the person to be evaluated and treated until a court hearing. The individual making the request has filed a petition with the court for this purpose and is, therefore, called the "petitioner." The individual to be taken into custody for examination will have an opportunity to respond to the petition and is, therefore, called the "respondent." If you are taken into custody, the word "respondent," below, refers to you.

1. A law enforcement officer or other person designated in the custody order must take the respondent into custody within 24 hours. If the respondent cannot be found within 24 hours, a new custody order will be required to take the respondent into custody. Custody is not for the purpose of arrest, but for the respondent's own safety and the safety of others, and to determine if the respondent needs treatment.
2. Without unnecessary delay after assuming custody, the law enforcement officer or other individual designated to provide transportation must take the respondent to a physician or eligible psychologist for examination.
3. The respondent must be examined as soon as possible, and in any event within 24 hours, after being provided for examination. The examining physician or psychologist will recommend either outpatient commitment, inpatient commitment, substance abuse commitment, or termination of these proceedings.

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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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Example Crisis Services Brochure

What happens next?
Once you are connected to a service provider, they are your "lead responder" and will give you contact information so you can reach them at any time in case of a crisis.

What to learn more?
To learn more about behavioral health services in your community, call Partners at 1-888-225-4473 or visit our website at www.partnersin.org.

Partners is a Local Management Entity/Managed Care Organization (LME/MCO), responsible for ensuring access to care for people who need services for mental health, intellectual/developmental disabilities and substance use disorders (MCO/ID).

Access to Care: 1-888-225-4473 (4473)
Administrative Offices: 1-877-864-4684
Website: www.PartnersIn.org
Email: memberquestions@partnersin.org and CorporateOP@p
201 S. New Hope Rd., Gastonia, NC 28054

Find us on Social Media

Where do you turn when a behavioral health crisis occurs?

What is a behavioral health crisis?
A behavioral health crisis happens when you are unable to cope with a range of emotions, impulses and behaviors. Below are examples of a behavioral health crisis:

- Feelings of panic or anxiety that cause you to avoid people and decisions.
- Believing people are out to get you or want to hurt you.
- Withdrawal from alcohol or drugs.
- Major changes in alcohol or drug use.
- Seeing or hearing things other people do not see or hear.
- Intense feelings of hopelessness, helplessness or sadness.
- Thinking or talking about hurting yourself or others.

Need help now?
Call 1-888-225-4473 (4473) anytime day or night. Partners' Access to Care Call Center will connect you to services for:

- Scheduling an appointment.
- Directing you to a nearby clinic.
- Sending a crisis professional out to meet you.

Pregnant women using drugs and people injecting drugs receive priority referrals! If this applies to you, you will receive the first open appointment.


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Question

Does a law enforcement officer, without a custody order, have the authority to take someone into custody and transport to a commitment examiner?

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The Emergency Procedure



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Emergency Commitment

- 13-year old is hitting mom
- Mom brings him to a mental health facility
- He was hitting her as she drove
- After assessment, facility determines it can not provide necessary level of care because he remains physically aggressive
- Staff goes to the magistrate’s office to petition; sign on door says, “back in one hour.”
- Due to the youth continuing to hit his mother and destroy property at the facility, police were called
- Police say they can’t do anything w/o custody order

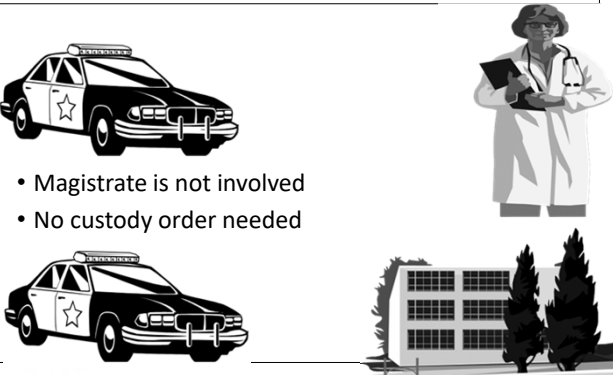
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Criteria for Emergency Commitment—Mental Illness

1. Mentally ill + Dangerous
2. Requires immediate hospitalization to prevent harm to self or others

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Transportation and Custody



- Magistrate is not involved
- No custody order needed

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Emergency Procedure Forms— Commitment Examiner

- “First Examination For Involuntary Commitment” (DMH 5-72-19)
- “Supplement to Support Immediate Hospitalization” (DMH 572-01-A)

www.ncdhhs.gov/assistance/mental-health-substance-abuse/involuntary-commitments

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Emergency Certificate

SUPPLEMENT TO SUPPORT IMMEDIATE HOSPITALIZATION
(To be used in addition to “Examination and Recommendation for Involuntary Commitment, Form 572-01)

CERTIFICATE

The Respondent, _____
requires immediate hospitalization to prevent harm to self or others because:

I certify that based upon my examination of the Respondent, which is attached hereto, the Respondent is (check all that apply):

- Mentally ill and dangerous to self
- Mentally ill and dangerous to others
- In addition to being mentally ill, is also mentally retarded

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Emergency Certificate

Name of 24-hour facility: _____
Address of 24-hour facility: _____

NORTH CAROLINA _____ County
Sworn to and subscribed before me this _____ day of _____, 20____
(seal)

Notary Public

My commission expires: _____

Pursuant to G.S. 122C-282 (c), this certificate shall serve as the Custody Order and the law enforcement officer or other person shall provide transportation to a 24-hr. facility in accordance with G.S. 122C-251.

TO LAW ENFORCEMENT: See back side for Return of Service

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Examiner Opts to Petition for a Custody Order

If upon examination of a respondent presented under the emergency procedure, the commitment examiner finds that the respondent

- Does not require immediate hospitalization to prevent harm to self or others, but
- Does meet the criteria for inpatient commitment
- Then the commitment examiner may petition the magistrate for a custody order in accordance with the clinician petition procedure

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The Return of Service



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Custody-GS 122C-261

The magistrate shall issue an order (AOC-SP-302A) to a

- law enforcement officer or
- other designated person (G.S. 122C-251)

to take the respondent into custody for examination by a commitment examiner



= return of service

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Custody-GS 122C-261, -251

Upon receipt of the custody order, the LEO must take the respondent into custody within 24 hours after the order is signed



Without unnecessary delay, the officer must take the respondent to a commitment examiner for examination

If respondent not taken into custody w/n 24 hours



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Summary: Procedure for the Layperson

1. Petition
2. Magistrate issues Custody Order
3. If respondent *not* take into custody . . .
4. Custody and transportation to site of 1st Exam
5. Commitment Examination → Examiner sends findings to Clerk
6. Respondent released or transported to a 24-Hour Facility

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Clinician Petitioner Recommends Inpatient Commitment—Custody Order 302B

The magistrate shall issue an order to

- a law enforcement officer or
- any other person designated under G.S. 122C-251

To take the respondent into custody and transport to a 24-hour facility for custody, examination, and treatment pending hearing

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TO ANY LAW ENFORCEMENT OFFICER:
The Court ORDERS you to take the above named respondent into custody **WITHIN 24 HOURS AFTER THIS ORDER IS SIGNED** and transport the respondent directly to a 24-hour facility designated by the State for the custody and treatment of involuntary clients and present the respondent for custody, examination and treatment pending a district court hearing.

Date: _____ Time: _____ AM PM Signature: _____ Deputy CSC CSC Assistant CSC Magistrate

This Order is valid throughout the State. If the respondent is taken into custody, this Order is valid for seven (7) days from the date and time of issuance.

III. RETURN OF SERVICE
A. CUSTODY CERTIFICATION

Respondent WAS NOT taken into custody for the following reason: _____

I certify that this Order was received and respondent served and taken into custody as follows:

Date Respondent Taken into Custody: _____ Time: _____ AM PM

Name Of Law Enforcement Officer (type or print): _____ Signature Of Law Enforcement Officer: _____

Name Of Law Enforcement Agency: _____ Badge No. Of Officer: _____

NOTE TO LAW ENFORCEMENT OFFICER: If respondent is not taken into custody within 24 hours after this Order is signed, check the appropriate box above and return to the Clerk of Superior Court immediately. If respondent is served and taken into custody, complete return of service on the reverse. When taking respondent into custody you must inform him or her that he or she is not under arrest and has not committed a crime, but is being transported to receive treatment and for his or her own safety and that of others.

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B. FOR USE WHEN 24-HOUR FACILITY NOT IMMEDIATELY AVAILABLE OR MEDICALLY APPROPRIATE
A 24-hour facility is not immediately available or medically appropriate. The respondent is being temporarily detained under appropriate supervision at the facility named below.

Date: _____ Time: _____ AM PM Name Of Commitment Examiner (type or print): _____

Name Of Examining Facility: _____ County Of Examining Facility: _____

Name Of Law Enforcement Officer (type or print): _____ Signature Of Law Enforcement Officer: _____

Name Of Law Enforcement Agency: _____ Badge No. Of Officer: _____

C. FOR USE WHEN RESPONDENT RELEASED BEFORE TRANSPORT TO 24-HOUR FACILITY
Respondent was temporarily detained under appropriate supervision at the site of first examination because the first commitment examiner (petitioning clinician) recommended inpatient commitment and a 24-hour facility was not immediately available or medically appropriate. Upon further examination, a commitment examiner determined that the respondent no longer meets the inpatient commitment criteria or meets the criteria for outpatient commitment. I returned the respondent to his/her regular residence or the home of a consenting person and released respondent from custody.

Date Delivered: _____ Time Delivered: _____ AM PM Name Of Commitment Examiner (type or print): _____

Name Of Examining Facility: _____ County Of Examining Facility: _____

Name Of Law Enforcement Officer (type or print): _____ Signature Of Law Enforcement Officer: _____

Name Of Law Enforcement Agency: _____ Badge No. Of Officer: _____

NOTE TO LAW ENFORCEMENT OFFICER: Upon completing this section, immediately return this form and the commitment examiner's written report (Form No. DMH 5-72-01) to the Clerk of Superior Court of the county where the petition was filed and the custody order issued.

D. PATIENT DELIVERY TO 24-HOUR FACILITY
I transported the respondent and placed him/her in the custody of the 24-hour facility named below:

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D. PATIENT DELIVERY TO 24-HOUR FACILITY
I transported the respondent and placed him/her in the custody of the 24-hour facility named below.

Date Delivered: _____ Time Delivered: _____ AM PM

Name Of 24-Hour Facility: _____ County Of 24-Hour Facility: _____

Name Of Law Enforcement Officer (type or print): _____ Signature Of Law Enforcement Officer: _____

Name Of Law Enforcement Agency: _____ Badge No. Of Officer: _____

NOTE TO LAW ENFORCEMENT OFFICER: Upon completing this section, immediately return this form to the Clerk of Superior Court of the county where the petition was filed and the custody order issued. (See top of reverse side).

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Summary: Commitment Examiner Petition Process

1. Examination and Petition → Magistrate
2. Magistrate issues Custody Order
2. If respondent *not* taken into custody
3. Respondent released before transport to 24-hour facility
4. Custody and transport to 24-hour Facility

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Legal Resources

- Mark Botts
 - 919.962.8204 office
 - 919.923.3229 mobile
 - botts@sog.unc.edu

- Online Commitment Law Training
 - <https://www.sog.unc.edu/resources/microsites/mental-health>
 - Involuntary Commitment Law--Online Training Program
 - Part 1-Commitment Criteria
 - Part 2-Commitment Procedure

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Questions?



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