



# Involuntary Commitment: The Legal Criteria for Commitment

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Mark Botts

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## Involuntary Commitment

- Criteria—The grounds for court-ordered treatment.
- Procedure—The process for obtaining court-ordered treatment.








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## Topics

- Criteria for Commitment (online)
  - Three kinds of commitment
  - Defining terms, including “dangerousness”
  - Writing a legally sufficient petition
- Commitment procedures
  - Layperson Petition Procedure
  - Clinician Petition Procedure
  - Emergency criteria and procedure



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## The Petitioner

The individual who asks the magistrate—through the submission of a sworn affidavit—to commence the commitment process

The affidavit is also called a petition



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## The Respondent

The individual who is the subject of the petition and—if the magistrate commences the commitment case—

- Will be examined by a commitment examiner
- Will have the opportunity to respond to the petitioner's allegations at a court hearing

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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 criteria for commitment
- Orders custody and evaluation of the respondent



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## The District Court Judge

Orders commitment of the respondent if there is clear, cogent, and convincing evidence that the respondent meets the criteria for commitment



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## The Commitment Examiner

Examines the respondent to determine whether the respondent meets the statutory criteria for commitment

Examiners who are qualified to perform the first examination:

- **Physicians**
- **PhD psychologists** with a health services provider certificate
- The following professionals if qualified through DHHS training and certification: licensed clinical social workers (LCSW), master's level or higher nurse practitioners (NP), physician assistants (PA), licensed clinical mental health counselors (LCMHC), licensed marital and family therapists (LMFT) and licensed clinical addictions specialists (LCAS)
  - ❖ LCAS qualified to perform only substance abuse commitment exam
  - ❖ <https://dmhdsolf.ncdhhs.gov/IVCCredentials/ProviderList>

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## The Clerk of Superior Court

- Receives the findings and recommendations of commitment examiners
- Maintains the court record containing the petition, custody order, and commitment examination forms
- Calendars the case for a hearing
- Appoints an attorney to represent the respondent

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## Law Enforcement Officer or Designated Person

Responsible for the custody and transportation of the respondent during the commitment process.

- **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).
- **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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## Custody and Transportation Agreements—G.S. 122C-251(g)

- The governing body of a city or county must adopt a plan for transportation of respondents in involuntary commitment proceedings.
- Acute care hospitals must participate in developing the plan
- Law-enforcement personnel, volunteers, or other public or private agency personnel may be designated to provide all or parts of the transportation.



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## 24-Hour Facility

For involuntary commitment purposes, a facility:

- Whose primary purpose is to provide treatment for mental illness, developmental disabilities, or substance abuse
- That provides a structured living environment and services for a period of 24 consecutive hours or more, and
- That is designated by NC DHHS as a facility for the custody and treatment of involuntary clients



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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, capable of surviving safely in the community, in need of treatment to prevent dangerousness, and unable to seek treatment voluntarily
  1. mental illness
  2. substance abuse
  3. dangerous to self
  4. dangerous to others



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## Question

In North Carolina, the magistrate should never issue an involuntary commitment custody order unless he or she has reasonable grounds to believe that the respondent is dangerous to self or others.

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

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## Criteria for Outpatient Commitment

- Mentally ill
- Based on psychiatric history, needs treatment to prevent further disability or deterioration that would predictably result in dangerousness
- Current mental status or nature of illness limits or negates the patient's ability to make an informed decision to seek treatment voluntarily or to comply with recommended treatment
- Capable of surviving safely in the community with available supervision from family, friends, or others

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## Question

In the definition of “dangerous to self” there are three kinds of dangerousness, or three ways that someone can be dangerous to himself or herself.

- Yes
- No

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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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## Dangerous to Self

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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## Question

When determining whether there is—for someone who lacks self-care ability—a reasonable probability of serious physical debilitation in the near future unless adequate treatment is given (the second prong of the dangerous-to-self definition) you may take into consideration previous episodes of dangerousness to self when applicable.

- Yes
- No



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**Unable to Care for Self**

Dorothy stopped taking her medication for mental illness. She has begun to experience visual and audio hallucinations and has ceased eating and bathing. You believe that she is unable to exercise judgment and discretion in the conduct of her daily responsibilities related to nourishment and medicine.

As you consider whether there is a reasonable probability that she will suffer serious physical debilitation in the near future, may you take into account that, two years ago, after exhibiting these same behaviors, she suffered serious dehydration and malnourishment requiring hospitalization?

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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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## Sample Case

- 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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## Self-Mutilation

actual  
or  
attempted  
+  
reasonable probability of serious self-mutilation



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## Dangerous to Others

Within the relevant past, the individual has:

1. Inflicted, attempted, or threatened serious bodily harm + reasonable probability of conduct repeating
2. Created a substantial risk of serious bodily harm + reasonable probability of conduct repeating
3. Engaged in extreme destruction of property + reasonable probability of conduct repeating



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## Summary of Commitment Criteria

1. **Outpatient commitment**—mentally ill, capable of surviving in the community, in need of treatment to prevent dangerousness, and unable to seek treatment voluntarily
2. **Inpatient commitment**—mentally ill + dangerous to self or others
3. **Substance abuse commitment**—substance abuser + dangerous to self or others




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## Submitting a Legally Sufficient Petition



- Magistrate role
- Petitioner role



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## Question

Magistrates and clinicians are very busy people, so it is okay—and even a good idea—to summarize, condense, collapse, shorten, or pare down the information that a petitioner for commitment would want to write in the fact section of the Affidavit and Petition for Involuntary Commitment.

- Yes
- No



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## The Magistrate's Role

The diagram illustrates the Magistrate's role in determining belief. It shows a stack of papers labeled "Petition" followed by a plus sign, a book labeled "Legal Criteria", a red prohibition sign (a circle with a diagonal slash), and a blue button labeled "belief". This suggests that the Magistrate's belief is based on the petition and legal criteria, but is not solely determined by them.

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## Question

The statements, "Patient exhibits bizarre behavior," "Respondent is suicidal," "Patient is mentally ill," and "Respondent is dangerous," are opinions or conclusions that, alone, does not reveal the factual basis upon which they are based and, therefore, are unhelpful to determining whether the patient is either mentally ill or dangerous to self or others. As such, they not appropriate for the fact section of the Affidavit and Petition for Involuntary Commitment.

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

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## Appellate Court said:

"Statute requires the affidavit to contain the facts on which the affiant's opinion is based. **Mere conclusions do not suffice** to establish reasonable grounds for issuance of custody order." *In re Ingram*, 74 N.C. App. 579 (1985).

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## Information Must Be Factual

Facts


**Conclusions (Opinions)**

- Violent
- Threatening
- Aggressive
- Assaulted someone

**Descriptive Facts**

- 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

Conclusions




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## Petition Exercise




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## AOC-SP-300

STATE OF NORTH CAROLINA File No.

County In The General Court Of Justice  
District Court Division

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**IN THE MATTER OF**

Name And Address Of Respondent **AFFIDAVIT AND PETITION FOR  
INVOLUNTARY COMMITMENT**

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Social Security No. Of Respondent (if available) | Date Of Birth | Driver's License No. Of Respondent | State  
G.S. 122C-261, 122C-261

I, the undersigned affiant, being first 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:

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 dangerousness.  
 in addition to being mentally ill, respondent is also "mentally retarded" pursuant to G.S. 122C-261.

2. a substance abuser and dangerous to self or others.

The facts upon which this opinion is based are as follows: (State facts, not conclusions, to support ALL blocks checked.)




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# Questions?

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