

Involuntary Commitment Law and Procedure

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1

Topics


- Review changes effective Oct. 1, 2019
 - To whom may you issue the custody order?
 - Where must the respondent be taken for the first examination?
 - Who may perform the commitment examination?
 - How did the emergency procedure change?
- Review the commitment process and magistrate role



2

Involuntary Commitment


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



3

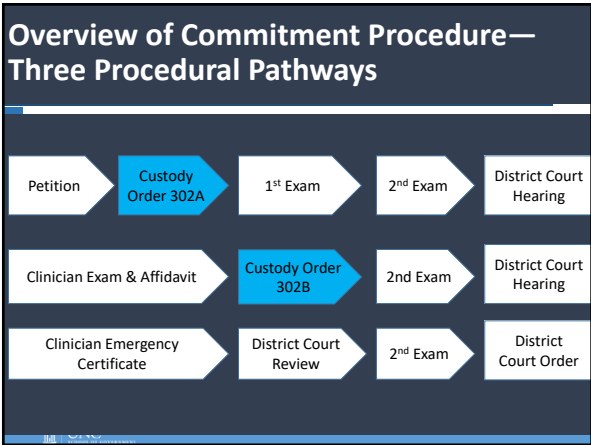
The Criteria for Commitment

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 voluntarily seek or comply with treatment
 1. mental illness
 2. substance abuse
 3. dangerous to self
 4. dangerous to others




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4



5

The Layperson Petition Procedure






6

The Petitioner

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



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7

The Magistrate—Layperson Petition

- If the magistrate finds reasonable grounds to believe that
 - the facts alleged in the affidavit are true, and that
 - the respondent probably meets the criteria for commitment
 - Outpatient commitment
 - Inpatient commitment, or
 - Substance abuse commitment
- Then the magistrate shall issue an order to a law enforcement officer or **other designated person** to take the respondent into custody for examination by a commitment examiner.

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8

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
 - To have reasonable grounds to believe something, you must first have knowledge of facts that lead to that belief
 - For you to have knowledge of facts that would give you reasonable grounds to believe, the affiant must provide you factual information (behaviors, conditions) in the affidavit
 - Conclusory statements or opinions asserted by the affiant do not suffice to give you grounds to believe, for you cannot simply adopt the affiant's beliefs as your own.
 - You must come to your own belief based on knowledge of the facts asserted in the affidavit

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9

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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10

Persons Designated in a County Transportation Agreement

- Every county **must** adopt an agreement with the participation of law enforcement and “affected agencies”
- Agreement **may** designate persons other than law enforcement officers to carry out all or part of the transportation and custody.
- **Designated persons** must participate in training identified by the LME/MCO that, to the extent feasible, addresses
 - 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

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11

Where does LEO take the respondent? Community Crisis Services Plans

- LME/MCOs are required to create a “community crisis plan” that, among other things, identifies where the respondent shall be taken for the first IVC exam
- Law enforcement officer transporting respondent for a 1st exam must take respondent to the **facility identified in the plan**, unless:
 - Exigent circumstances require transport to a hospital ED
 - Commitment examiner is not available at the facility
 - A plan has not been adopted
 in which case LEO shall transport to an acute care hospital or state facility

G.S. 122C-202.2

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12

Magistrate Must Explain Next Steps to Petitioner

- Next steps in the commitment process
- 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 or to use in the future in lieu of the commitment process



13

Custody-GS 122C-261, -251

Upon receipt of the custody order, the law enforcement officer 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 physician or psychologist for examination.



14

Required Communication

Not under arrest

Treatment


Safety



15

Hospital ED Role—Findings and Recommendations

Findings	Result
Commitment criteria not found	→ Release
Outpatient commitment	→ Release pending hearing
Inpatient commitment	→ Inpatient facility
Substance abuse commitment	→ Release or inpatient facility



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16



Inpatient Commitment Recommended

- If the examiner recommends inpatient commitment the law enforcement officer or other designated person shall take the respondent to a 24-hr facility
- If a 24-hour facility is not
 - Immediately available or
 - Medically appropriate
 The respondent may be *temporarily detained under appropriate supervision*

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17

The Clinician Petition Procedure

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18

Examining Clinician Seeks a Custody Order

If a commitment examiner:

- Examines the respondent, and
- Signs the "Affidavit and Petition" before an official authorized to administer oaths (notary), then

Then the petitioning clinician may file the examination and affidavit forms by delivering copies through facsimile or electronic transmission



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19

Qualified Commitment Examiners

- Physicians
- Psychologists
- Professionals trained and certified by NC DHHS:
 - licensed clinical social workers,
 - masters level or higher nurse practitioners,
 - physician assistants,
 - licensed professional counselors (now called licensed clinical mental health counselors)
 - licensed clinical addictions specialists

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20

Identifying Certified Examiners

- DHHS shall
 - annually submit a list of certified examiners to the Chief District Court of each judicial district
 - maintain a current list on its website
- G.S. 122C-263.1

- Over 250 clinical professionals listed

www.ncdmh.net/IVCCredentials/ProviderListByMCO/Index


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21

Forms

- “First Examination For Involuntary Commitment” (DMH 5-72-19)
 - <https://www.ncdhhs.gov/ivc>
- “Affidavit and Petition for Involuntary Commitment” (AOC-SP-300)
 - <https://www.nccourts.gov/documents/forms?>

To petition the magistrate for a custody order under the clinician procedure, a clinician must complete and submit both forms




22

Magistrate is Guided by the Clinician’s Recommendation

If the petitioning examiner recommends:



- Outpatient commitment, then evaluate the facts presented in the examiner’s affidavit according to the outpatient commitment criteria
- Inpatient commitment, then evaluate the facts presented in the affidavit according to the inpatient commitment criteria
- Substance abuse commitment, then evaluate the facts presented in the affidavit according to the substance abuse commitment criteria



23

Examiner Role → Magistrate Role

Examiner Recommendation	→	Magistrate Order
Outpatient commitment	→	Hearing Order (release)
Inpatient commitment	→	Custody Order (inpatient facility)
Substance abuse commitment and hold pending hearing	→	Custody Order (inpatient facility)
Substance abuse commitment and release pending hearing	→	Hearing Order (release)

24

Order that a Hearing be Held AOC-SP-305

STATE OF NORTH CAROLINA		In The General Court Of Justice Superior Court Division
County _____		FINDINGS AND ORDER INVOLUNTARY COMMITMENT PHYSICIAN-PETITIONER RECOMMENDS OUTPATIENT COMMITMENT <small>G.S. 122C-281</small>
IN THE MATTER OF: Name And Address Of Respondent _____		
<p>NOTICE: This form is to be used instead of the Findings And Custody Order (AOC-SP-302) only when the petitioner is a physician or psychologist who recommends outpatient commitment or release pending hearing for a substance abuser.</p>		
I. FINDINGS		
<p>The petitioner in this case is a physician/the psychologist who has recommended outpatient commitment/substance abuse commitment with the respondent being released pending hearing.</p> <p>The Court finds from the petition in the above matter that there are reasonable grounds to believe that the facts alleged in the petition are true and that the respondent is probably:</p> <p><input type="checkbox"/> mentally ill and in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness.</p> <p><input type="checkbox"/> a substance abuser and dangerous to himself/herself or others.</p>		
ORDER		
<p>It is ORDERED that a hearing before the district court judge be held to determine whether the respondent will be involuntarily committed.</p>		

25

Custody Order—AOC-SP-302B

The magistrate shall issue an order to

- a law enforcement officer or
- any other person authorized 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

26

Custody Order—AOC-SP-302B

IN THE MATTER OF:		FINDINGS AND CUSTODY ORDER INVOLUNTARY COMMITMENT (PETITIONER IS CLINICIAN WHO HAS EXAMINED RESPONDENT)	
Name And Address Of Respondent _____		G.S. 122C-282, -281, -283	
Social Security No. Of Respondent _____	Date Of Birth _____	Divorce License No. Of Respondent _____	Sex _____
I. FINDINGS			
<p>The Court finds from the petition in the above matter that there are reasonable grounds to believe that the facts alleged in the petition are true and that the respondent is probably:</p> <p>(Check all that apply.)</p> <p><input type="checkbox"/> 1. mentally ill and dangerous to self or others.</p> <p><input type="checkbox"/> In addition to being mentally ill, the respondent probably is also mentally retarded. (If this finding is made, see G.S. 122C-281(b) and (c) for special instructions.)</p> <p><input type="checkbox"/> 2. a substance abuser and dangerous to self or others.</p>			
II. CUSTODY ORDER			
<p>TO ANY LAW ENFORCEMENT OFFICER:</p> <p>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.</p> <p>Date _____ Time <input type="checkbox"/> AM <input type="checkbox"/> PM Signature _____</p> <p style="font-size: small;"> <input type="checkbox"/> Deputy CSC <input type="checkbox"/> CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Magistrate </p> <p>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.</p>			
III. RETURN OF SERVICE A. CUSTODY CERTIFICATION			
<p><input type="checkbox"/> Respondent WAS NOT taken into custody for the following reason:</p> <p><input type="checkbox"/> I certify that this Order was received and the respondent served and taken into custody as follows:</p> <p>Name/Respondent/Parent/next/Closest _____ Time _____ <input type="checkbox"/> AM <input type="checkbox"/> PM</p>			

27


Holding Pattern

After 1st exam and recommendation of inpatient commitment if a 24-hour facility is not

- Immediately available or
- Medically appropriate

The respondent may be temporarily detained under appropriate supervision at the site of first examination.

28



28

“Temporary Detention under Appropriate Supervision”




29

Seven Day Limit

- ❑ Seven days after issuance of custody order, commitment must be terminated if 24-hour facility still not available or medically appropriate
 - Physician must report to clerk of court
 - Proceedings must be terminated
- ❑ New commitment proceedings may be initiated
 - Requires new petition
 - Requires new examination if petitioner is clinician
 - Requires new custody order

30



30

Change in Respondent's Status

1. If at any time a physician or psychologist determines respondent no longer meets the inpatient criteria:
 - Respondent must be released (proceedings terminated), or
 - Physician may recommend outpatient commitment
2. Decision to release or recommend outpatient commitment must
 - Be made in writing (conduct exam and use exam form)
 - Reported to the clerk of superior court by most reliable and expeditious means



31

"Appropriate Supervision"

- AG interprets statute to mean that the LEO may leave
- But the LEO has a duty to:
 - ▶ Ensure that the respondent is left under appropriate supervision
 - ▶ Consult with facility staff
 - ▶ Not to make a unilateral decision
 - ▶ Remain if the respondent is violent or may reasonably be expected to become violent.
- LEO may not deliver, "drop and leave" w/o facility consent



32

Determining Appropriate Supervision



- Whether respondent appears violent
- Whether respondent has a history of violence
- The type of facility where respondent is being examined
- The personnel available to supervise respondent

"Commitment Issues for Law Enforcement," (Dec. 2014) NC DOJ, Law Enforcement Liaison Section.



33


The Emergency Procedure



34




Criteria for Emergency Commitment—Mental Illness

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







35

Transportation and Custody



- Magistrate is not involved
- No custody order needed




36

Emergency Procedure Forms

- “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



37

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



38

Emergency Certificate

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

CLC: 24-hour facility
Clerk of Court in county of 24-hour facility

Note: If it cannot be reasonably anticipated that the clerk will receive the copy within 24 hours (excluding Saturdays, Sundays and holidays) of the time that it was signed, the physician or eligible psychologist shall also communicate the findings to the clerk by telephone.

NORTH CAROLINA _____ County
Sworn to and subscribed before me this _____ day of _____, 20__


(seal)

Notary Public

My commission expires: _____

Pursuant to G.S. 122C-262 (b), 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



39

Emergency Certificate

- Operates as a custody order and authorizes transport to a 24-hour facility
- Commitment examiner must send to the Clerk of Superior Court by the most reliable and expeditious means
- Clerk must submit to the Chief District Court Judge for review
- Judge reviews the submission to determine if there are reasonable grounds to believe the commitment criteria are met



40

If Emergency Criteria Not Met

- 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
- The commitment examiner may petition the magistrate for a custody order in accordance with the clinician petition procedure



41

Emergency Procedure – Mental Illness


- Before October 1, 2019, used for authority to hold patients
 - Who are at hospital ED or other site of first examination,
 - Who present an immediate danger
 - Who are an imminent flight risk, and
 - For whom no custody order has yet been issued
- S.L. 2018-33 (S 630) took away this authority
- S.L. 2019-240 (S 537), Sec. 26.(g) substituted a provision granting a hospital or other site of first examination qualified immunity for detaining a patient pending completion of exam, submission of petition, and waiting for issuance of custody order




42

Questions?

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43
