

Involuntary Commitment Law and Procedure: From Petition to Hearing and Post-Commitment Duties

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I. Criteria for Involuntary Commitment¹

Minors are subject to the same involuntary commitment procedures and criteria as adults, and the consent of a minor's parent is not required.²

A. Inpatient Commitment: appropriate for a person who is **mentally ill** and **dangerous** to himself or others

B. Outpatient Commitment: appropriate for persons who are

- (1) **mentally ill;**
- (2) capable of surviving safely in the community with available supervision from family, friends, or others;
- (3) based on their psychiatric history, in need of treatment in order to **prevent** further disability or deterioration that would predictably result in **dangerousness**; and
- (4) whose current mental status or nature of illness limits or negates the ability to make an informed decision to seek voluntary treatment or comply with recommended treatment.

Note: although (1) through (4) are required to support an outpatient commitment order in the district court, only (1) and (3) are required to support a custody order issued by the magistrate.

C. Substance Abuse Commitment: appropriate for an individual who is **a substance abuser** who is **dangerous** to himself or others.³

¹ Statutory law--law enacted by the North Carolina General Assembly--is the primary source of law governing the procedure and criteria for civil commitment in North Carolina. Parts six, seven and eight of Article 5, Chapter 122C of the General Statutes (G.S.) contain the statutory guidelines for the involuntary commitment of the mentally ill and substance abusers.

² With a parent's consent, a minor can be **voluntarily admitted** to an inpatient facility. To be voluntarily admitted, the inpatient facility must determine that the minor is in need of treatment for mental illness or substance abuse. Dangerousness is not a requirement, as it is with involuntary commitment.

³ Under a substance abuse commitment order, treatment may be either on an outpatient basis or at a 24-hour facility, as determined by the supervising physician. G.S. 122C-290.

II. Statutory Definitions**G.S. 122C-3****A. Mental Illness:**

- (1) **when applied to a minor**, means a mental condition, other than mental retardation 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 so that he is in need of treatment.
- (2) **applied to an adult**, means an illness which 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.

- *illness*
- *that impairs judgment and self-control*
- *to a degree that treatment or supervision is advisable*

B. Mental Retardation: means significantly sub average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested before age 22.

C. Substance Abuser: a person who engages in substance abuse, which means 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.

- *pathological use or abuse of alcohol or drugs*
- *that impairs personal, social, or occupational functioning*

D. Dangerous to self means that within the relevant past:⁴

- (1) the individual has acted in such a way as to show
 - (a) that 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) that there is a reasonable probability of his suffering serious physical debilitation within the near future unless adequate treatment is given.⁵ (A showing of behavior that is grossly irrational, of actions that the individual is unable to control, of behavior that is grossly inappropriate to the situation, or of other evidence of severely impaired insight and judgment shall create a *prima facie* inference that the individual is unable to care for himself); OR
- (2) the individual has attempted suicide or threatened suicide *and* there is a reasonable probability of suicide unless adequate treatment is given; OR

⁴ Acts are relevant if they occur close enough in time to the petition to have probative value on the ultimate question before the magistrate of whether there is a reasonable probability that such conduct would be repeated. In other words, acts are “within the relevant past” if they are close enough in time to lead a reasonable person to believe that they probably will be repeated. How close in time actions must be to create this belief will depend on the information presented in the petition, as the magistrate’s finding of dangerousness will depend on the totality of the circumstances, which vary with each petition

⁵ An inpatient commitment order was upheld on rehearing where respondent required anti-psychotic medication, but would refuse to take medication, eat properly, or otherwise follow recommended outpatient treatment. Testimony indicated that respondent would not be able to survive without supervision and had history of bizarre and aggressive thoughts and behavior. "Failure of a person to properly care for his/her medical needs, diet, grooming and general affairs meets the test of dangerousness to self." *In re Lowery*, N.C. App., No. 9226DC382 (5/4/93). Compare, *In re Monroe*, 49 N.C. App. 23, 270 S.E.2d 537 (1980) (Unusual eating habits alone, without any evidence of the future effect of the irregular dietary habits, do not constitute dangerousness to self.)

In another case, *In re Medlin* 59 N.C. App. 33, 279 S.E.2d 604 (1982), respondent had left her job, been unemployed for one year, had not attempted to seek other employment, and was living in her car for two weeks prior to the hearing. It appeared that the only food that the respondent had was that which her daughter brought to the car for her, and her daughter feared that respondent would die of carbon monoxide poisoning if respondent continued to live in her car the rest of the winter. The court found these facts to constitute "dangerousness to self," on the basis that respondent would die or slowly suffer injury unless she received treatment (reasonable probability of serious debilitation within the near future unless treatment received).

- (3) the individual has mutilated himself or attempted to mutilate himself *and* there is a reasonable probability of serious self-mutilation unless adequate treatment is given.

Dangerous to self = unable to care for self + prob. of serious phys. debilitation or attempt or threat of suicide + probability of suicide or actual or attempted self-mutilation + probability of mutilation
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future probability: when determining the reasonable probability of future dangerous conduct, previous episodes of dangerousness to self may be considered.

E. Dangerous to Others: means that

- (1) within the relevant past, the individual has inflicted or attempted to inflict or threatened to inflict⁶ serious bodily harm on another, or has acted in such a way as to create a substantial risk of serious bodily harm to another, or has engaged in extreme destruction of property; AND
- (2) that there is a reasonable probability that this conduct will be repeated.

Dangerous to others = threatened, attempted, inflicted, or created a substantial risk of serious bodily harm, + probability of conduct repeating or engaged in extreme destruction of property + probability of conduct repeating
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homicide: clear, cogent, and convincing evidence that an individual has committed a homicide in the relevant past is *prima facie* evidence of dangerousness to others.

⁶ "Dangerous to others" does not require a finding of overt acts. In re Monroe, 49 N.C. App. 23, 270 S.E.2d 537 (1980).

future probability: when determining the reasonable probability of future dangerous conduct, previous episodes of dangerousness to others may be considered.

F. Eligible Psychologist: means a licensed psychologist who holds permanent licensure and certification as a health services provider psychologist issued by the NC Psychology Board.

G. Physician: means an individual licensed by the State to practice medicine in North Carolina or a licensed medical doctor employed by the Veterans Administration.

III. The Petition

G.S. 122C-261; 122C-281

A. Anyone who has knowledge of an individual who meets the criteria for commitment may appear before a clerk of superior court or a magistrate, execute an affidavit to this effect ("Affidavit and Petition for Involuntary Commitment" - AOC-SP-300), and petition the clerk or magistrate for issuance of an order to take the respondent (the individual named in the petition) into custody for examination by a physician or eligible psychologist. (Hereafter, the reference to magistrates includes clerks of superior court unless otherwise noted.)

1. *Knowledge need not be first-hand*, but may be what others have told the petitioner. For example, a law enforcement official may initiate a petition based upon what others have told the officer.
2. *Mental retardation*: Petitioners who know or have reason to believe that the respondent is mentally retarded must state this knowledge or belief in the petition.

B. Jurisdiction is in the county where the respondent resides or is found.

C. The petitioner must appear personally before a magistrate and swear to the facts alleged in the petition, unless the petitioner is a physician or eligible psychologist.

D. Physician or psychologist petitioner: The petitioner need not appear personally before the magistrate if the petitioner is a physician or eligible psychologist, has examined the respondent, and executes the petition before a notary public. In this case, the petition may be hand delivered (original) or a copy faxed to the magistrate. If faxed, the petitioner must mail the original w/n 5 days after transmission of the fax.

- In addition to the petition, the physician or psychologist petitioner should fill out and attach to the petition the "Examination and Recommendation to Determine the Necessity for Involuntary Commitment" (DMH 572-01), which indicates the recommended commitment.

E. Facts Required: The petitioner must state on the petition facts showing that the respondent meets the commitment criteria. Conclusory statements (e.g., "respondent is mentally ill and unable to care for herself") are insufficient to support a petition.

IV. The Magistrate's Role**G.S.122C-261; 122C-281**

- A. Custody and Transportation Order:** The magistrate or clerk of superior court responds to a petition for involuntary commitment by either issuing or not issuing a custody order. The custody order requires law enforcement to take a person into custody and transport him or her to a physician or psychologist for examination. The magistrate does not commit anyone, but merely begins the process that could result in a district court issuing a commitment order.
- B. Magistrate's Standard:** If the magistrate or clerk finds **reasonable grounds to believe** that the facts alleged in the affidavit are true and that the respondent **probably** meets the criteria for commitment, then the magistrate or clerk *must* issue an order **to** a law enforcement officer, or any other person authorized by statute, to take the respondent into custody for examination by a physician or eligible psychologist. In contrast, a district court judge must be presented with *clear and convincing evidence* in order to actually commit a person to treatment.

V. The Custody Order**(Order is valid throughout the state)**

- A. Lay petitioner (not a physician or psychologist):** If the petitioner is not a physician or psychologist (e.g., petitioner is a family member or friend) and the magistrate finds probable cause to believe that the respondent meets the criteria for commitment (either the outpatient, inpatient or substance abuse commitment criteria), then the magistrate must issue an order (form **AOC-SP-302**) that respondent be taken into custody for examination⁷ by a physician or eligible psychologist.
- B. When petitioner is a physician or psychologist:** If the petitioner is a physician or eligible psychologist who recommends
- 1. inpatient commitment,** and the magistrate finds probable cause to believe that the respondent meets the criteria for inpatient commitment, the magistrate must issue an order (**AOC-SP-302**) to transport the respondent directly to a 24-hour facility for examination and custody pending a district court hearing.
 - 2. outpatient commitment,** and the magistrate finds probable cause to believe that the respondent meets the criteria for outpatient commitment, the magistrate must issue an order that a hearing before a district court judge be held to determine whether the respondent will be involuntarily committed to outpatient treatment. (Form **AOC-SP-305** is used; no custody order is issued.)

⁷ This is the *first* examination in the commitment process. Depending on the results of this examination the respondent may or may not be released subsequent to the examination, and the commitment process may or may not proceed to a *second* examination at a 24-hour facility.

3. **substance abuse commitment**, and the magistrate finds probable cause to believe that the respondent meets the criteria for substance abuse commitment, the magistrate shall either
 - (a) issue an order to transport the respondent directly to a 24-hour facility for examination and custody pending a district court hearing (**AOC-SP-302**), or
 - (b) issue an order that a hearing before a district court judge be held to determine whether the respondent will be involuntarily committed (**AOC-SP-305**), in which case the respondent will be released pending the district court hearing.

VI. Respondents with Mental Retardation

G.S. 122C-261

If the magistrate finds that, in addition to probably being mentally ill, the respondent is also probably mentally retarded, the magistrate must contact the area authority before issuing a custody order.

- A. Mental retardation** is a developmental disorder usually first diagnosed in childhood or adolescence. It is characterized by significantly subaverage intellectual functioning and impairments in adaptive functioning. It is not possible to determine, based on a respondent's behavior during a psychotic episode, whether the respondent has mental retardation. Questions to ask in determining whether respondent is also probably mentally retarded are:
 1. Has a doctor or psychologist ever said the person has mental retardation?
 2. Has the person ever been in special education classes for students with mental retardation?
 3. Has the person ever received special services for persons with mental retardation, such as sheltered workshop or group home placement?
 4. Did the problems related to intelligence functioning begin before age 22?
- B. Area authority role:** Upon contact, the area authority must designate the facility where the respondent will be taken for examination by a physician or eligible psychologist. Subsequently, area authority staff, by either (i) conducting or participating in the exam or, (ii) consulting with the physician/psychologist performing the exam, will determine respondent's MR status and whether diversion is required. If diversion is required, the area authority will arrange for admission to a non-state psychiatric facility.
- C. Physician/psychologist petition:** The procedure is essentially the same as with lay petitions. Physician or psychologist petitioners must assess respondent for mental retardation and, if the petitioner has reason to believe that the respondent is mentally retarded, this finding must be documented on the examination report.⁸ If the magistrate finds that, in addition to probably being mentally ill, the

⁸ Similarly, in the case of the emergency procedure for individuals needing immediate hospitalization, any finding of mental retardation must be stated on the emergency certificate.

respondent is also probably mentally retarded, the magistrate must contact the area authority before issuing a custody order. The area authority then designates the facility where the respondent will be taken for a 2nd exam and custody pending the commitment hearing.

D. Note to Magistrates: Do not be alarmed if, after you find that the respondent is probably mentally retarded, the area authority designates admission to a state psychiatric facility. The area authority will consult information in its possession (e.g., client lists indicating whether an individual has MR or not) and may determine that the respondent does not have MR and diversion is unnecessary. Also, admission of an individual who is known or reasonably believed to be mentally retarded may occur in certain limited circumstances.⁹

VII. Transportation

G.S. 122C-251

A. Who transports respondent:

1. **Law enforcement official:** The city has the duty to provide transportation of a respondent who is a resident of the city or who is taken into custody in the city limits. The county has the duty to provide transportation for a respondent who resides in the county outside the city limits or who is taken into custody outside of city limits. However, cities and counties may contract with each other to provide transportation.

Transportation between counties:

- Transportation from one county to another for **admission** to a 24-hour facility is the responsibility of the county where respondent is taken into custody.
- For respondents held in a 24-hour facility who have requested a **change of venue** for the district court hearing, the county where the petition for commitment was initiated shall provide transportation.
- For **discharge** from a 24-hour facility, the county of residence of the respondent has the duty to provide transportation. However, the respondent may use his or her own transportation at his or her own cost.

⁹ A respondent may be admitted to the state hospital if (1) the respondent is so extremely dangerous that he or she poses a serious threat to the community and to patients committed to non-state hospital psychiatric units, as determined by the director of the N.C. Division of MH/DD/SAS or the director's designee; or (2) the respondent is so gravely disabled by multiple disorders and medical fragility, or multiple disorders and deafness, that alternative care is inappropriate, as determined by the director of the N.C. Division of MH/DD/SAS or the director's designee.

2. **Family member or friend:** A magistrate may authorize the family or immediate friends of the respondent, if they so request, to transport the respondent to the local physician and/or to the 24-hour facility, *where danger to the public, the family or friends of the respondent, or the respondent himself, is not substantial.* (Form AOC-SP-902M.)
3. **Other:** The governing body of a city or county may adopt a plan for transportation of respondents. This plan may designate law enforcement, volunteers, or other public or private agency personnel to provide all or parts of the transportation required by involuntary commitment proceedings. Persons so designated must be trained and the plan must assure adequate safety protections for both the respondent and the public.

B. Specific requirements or limitations:

1. To the extent feasible, law enforcement officers transporting respondents must dress in **plain clothes** and travel in **unmarked vehicles**.
2. When taking respondents into custody, law enforcement officers, to the extent possible, must **advise respondents** that they are not under arrest and have not committed a crime, but are being transported to receive treatment and for their own safety and the safety of others.
3. In providing transportation of a respondent, a city or county must provide a **driver or attendant who is the same sex** as the respondent, unless the law enforcement officer allows a family member of the respondent to accompany the respondent.
4. The law enforcement officer may use **reasonable force** to restrain the respondent if it appears necessary to protect the officer, the respondent, or others. No law enforcement officer may be held criminally or civilly liable for assault, false imprisonment, or other torts or crimes on account of reasonable measures taken under authority of the involuntary commitment law.

C. Timing: G.S. 122C-261; 122C-263; 122C-266.

- (1) **Pick up:** The person designated in the custody order must take the respondent into custody **within 24 hours** after the order is signed. If respondent cannot be taken into custody within 24 hours, a new custody order will be required before taking the respondent into custody.
- (2) **Present for examination:** "**Without unnecessary delay after assuming custody,**" the law enforcement officer or other individual designated to provide transportation must take respondent to a physician or eligible psychologist for examination. (If the petitioner is a doctor who recommends

inpatient commitment, the custody order should instruct the officer to take the respondent directly to a 24-hr facility.)

D. Where:

1. **Lay petition:** In the case of a lay petition (petitioner is not a physician or eligible psychologist), upon receipt of the custody order, the officer takes respondent **to an "area facility"** (a facility that is operated by or under contract with the area authority) for examination.
 - If a physician or psychologist is not available at the area facility (i.e., facility is closed), then the individual designated to provide transportation shall take respondent to **any physician or eligible psychologist locally available**. In this case, the officer will usually take respondent to a hospital emergency room. If the hospital ER is not available, the officer should proceed to any other place designated by the area mental health authority or to any physician or eligible psychologist in the county.
 - **Detention:** If a physician or psychologist is not immediately available, the respondent may be detained in an area facility, if one is available. If an area facility is not available, then respondent may be detained under appropriate supervision in his or her home, in a private hospital or clinic, or in a general hospital, but **not in a jail or other penal facility**. The respondent may also be detained in a State facility for the mentally ill (if the custody order is based on mental illness).
2. **Physician/psychologist petition** If the petitioner is a physician or eligible psychologist who recommends inpatient treatment (i.e., one examination has already been conducted), the custody order should direct the law enforcement officer to take respondent directly to a **24-hour facility** where a "second examination" will be conducted.

E. Recovery of transportation expense: The cost and expense of transporting a respondent to or from a 24-hour facility is the responsibility of the county of residence of the respondent. A city or county is entitled to recover from the respondent's county of residence the reasonable cost of transporting any respondent, and the county of residence must reimburse the other county or city the reasonable transportation costs incurred. A respondent's county of residence may recover from the respondent costs paid to a county or city that provided transportation, if the county of residence provides the respondent or other individual liable for the respondent's support reasonable notice and opportunity to object to the recovery. Reimbursement for transportation costs paid to another county may be sought from:

1. Any respondent who is not indigent;
2. Any person or entity that is legally liable for respondent's support and maintenance and who has sufficient property to pay the cost;
3. Any person or entity that is contractually responsible for the cost; or

4. Any person or entity otherwise liable for the cost under federal, state, or local law.

VIII. First Examination

G.S.122C-263; 122C-283

A. Examination: The respondent must be examined *as soon as possible, and in any event within 24 hours*, after respondent is presented for examination. The examination must include, but is not limited to, an assessment of respondent's:

1. Current and previous mental illness or mental retardation including, if available, previous treatment history;
2. Dangerousness to himself or others;
3. Ability to survive safely without inpatient commitment, including the availability of supervision from family, friends or others; and
4. Capacity to make an informed decision concerning treatment.

For **substance abuse** commitment, the examination must include an assessment of respondent's (1) current and previous substance abuse including, if available, previous treatment history; and (2) dangerousness to himself or others.

B. Recommendation:

1. **Outpatient commitment:** The examining physician or eligible psychologist must recommend outpatient commitment if he or she finds that respondent meets the four criteria for outpatient commitment, and the person designated in the order to provide transportation is required to return the respondent to her regular residence or, with respondent's consent, to the home of a consenting individual in the originating county.
 - a. **Duty to ID proposed provider:** The examining physician or psychologist must show on the examination report the name, address, and telephone no. of the proposed outpatient treatment physician or center.
 - b. **Duty to arrange treatment:** When outpatient commitment is recommended, the examining physician or eligible psychologist, if different from the proposed outpatient treatment physician or center (i.e., an emergency room physician who proposes treatment at the local mental health center), must
 - give the respondent a written notice listing the name, address, and telephone number of the proposed outpatient treatment physician

or center and directing the respondent to appear at the address at a specified date and time (**DMH 5-74-86**), and before the appointment

- notify by telephone, and send a copy of the notice and examination report, to the designated outpatient treatment physician or center.

2. **Inpatient commitment:** The physician or eligible psychologist must recommend inpatient commitment if he or she finds that the inpatient criteria are met. The law enforcement officer or other designated person must take the respondent to a 24-hour facility pending a district court hearing.
3. **Substance abuse commitment:** The physician or eligible psychologist must recommend commitment and whether the respondent should be released or held at a 24-hour facility pending hearing if the examiner finds that the substance abuse commitment criteria are met. Based on the physician's recommendation, the law enforcement officer shall either take respondent to a 24-hour facility or release her.
4. **Release:** 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 respondent was probably mentally ill, then the person designated in the order to provide transportation must return 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.

C. Documentation and communication with clerk: In all cases, the findings of the physician or eligible psychologist and the facts on which they are based must be in writing, a copy of which must be sent to the clerk of the superior court by the most expeditious and reliable means. If it cannot reasonably be expected that the clerk will receive a copy within 48 hours of the time that it was signed, the physician/psychologist must communicate her findings by phone.

D. Communication with respondent: At the completion of the examination, the physician or psychologist must provide the respondent with specific information regarding the next steps that will occur in the commitment process.

IX. Second Examination

G.S. 122C-266;122C-285

A. Examination: The respondent must be examined within 24 hours of arrival at the 24-hour facility. The second examination must be conducted by a physician, unless the respondent is being evaluated for substance abuse commitment and the first examination was performed by a physician, in which case the second examination

may be performed by any "qualified professional."¹⁰ The physician must not be the same physician who completed the first examination (or emergency certificate).

B. Recommendation:

1. **Inpatient:** If the physician determines that respondent meets the criteria for inpatient commitment, she shall hold the respondent at the 24-hour facility pending the district court hearing.
2. **Outpatient:** If the physician determines that respondent meets the criteria for outpatient commitment, she must
 - a. release respondent pending the district court hearing,
 - b. notify the clerk of superior court of the county where the petition was initiated, and
 - c. arrange and give notice of an appointment with a proposed outpatient treatment physician just as the first examiner would, as provided in section **VIII, B, 1, b, above.**

The law enforcement officer or other person designated to provide transportation must return respondent to respondent's residence in the originating county or, if requested, to another location in the originating county.

3. **Substance abuse:** If the physician determines that respondent meets the criteria for substance abuse commitment, she must
 - a. hold and treat the respondent at the facility or
 - b. designate other treatment pending the district court hearing.

If the respondent is released, the law enforcement officer or other person designated to provide transportation must return respondent to the originating county.

4. **Release:** If the physician determines that the respondent does not meet the criteria for inpatient, outpatient, or substance abuse commitment, then she shall release the respondent and the proceedings shall be terminated. The law enforcement officer or other person designated to provide transportation must return respondent to the originating county.

¹⁰ "Qualified professional" is defined at G.S. § 122C-3(31) to mean any individual with appropriate training or experience as specified by the General Statutes or by rule of the Commission in the fields of mental health or developmental disabilities or substance abuse treatment or habilitation, including physicians, psychologists, psychological associates, educators, social workers, registered nurses, and certified counselors.

X. Clerk of Superior Court**G.S. 122C-264; 122C-284**

- A. Outpatient:** Upon receipt of a physician's/eligible psychologist's finding and recommendation that respondent meets the criteria for outpatient commitment, the clerk of superior court of the county where the petition was initiated, upon direction of a district court judge, shall
- calendar a hearing and
 - notify *the proposed outpatient treatment physician or center*, the respondent, and the petitioner, of the time and place of the hearing.
- B. Substance abuse:** Upon receipt of a physician's/eligible psychologist's finding and recommendation that respondent meets the criteria for substance abuse commitment, the clerk of superior court of the county where the facility is located, if the respondent is held in a 24-hour facility, or the clerk of superior court where the petition was initiated, upon direction of a district court judge, shall
- assign counsel,
 - calendar a hearing, and
 - notify the respondent, his counsel, and the petitioner of the time and place of the hearing.¹¹

XI. Status of Respondent Pending Outpatient Hearing G.S. 122C-265

- A. Failure to appear for examination:** If a respondent, who has been recommended for outpatient commitment by an examining physician or eligible psychologist different from the proposed outpatient treatment physician or center, fails to appear for examination by the proposed treatment provider at the designated time, the proposed physician or center **must notify** the clerk of superior court. In response, the clerk must issue an order (**AOC-SP-224**) to a law enforcement officer to take the respondent into custody and take him immediately to the outpatient physician or center for evaluation. The law enforcement officer may wait during the examination and return the respondent to his home after the examination.
- B. Treatment:** Reasonable and appropriate medication and treatment may be prescribed by the examining physician or proposed outpatient treatment physician or center, but in no event may a respondent who is released on outpatient recommendation be physically forced to take medication or forcibly detained for treatment pending hearing.
- C. Change in status pending hearing:** If at any time pending the hearing the outpatient treatment physician or center determines that the respondent no longer meets the outpatient commitment criteria, the clerk of court must be notified and the

¹¹ The duties outlined here for a substance abuse recommendation also apply when inpatient commitment is recommended.

proceedings terminated. If respondent becomes dangerous to himself or others, new proceedings for involuntary commitment may be initiated. If an inpatient commitment proceeding is initiated pending the hearing for outpatient commitment and the respondent is admitted to a 24-hour facility to be held for an inpatient hearing, the clerk of court in the county where respondent is being held must send notice to the clerk of court of the county where the outpatient commitment was initiated and the outpatient commitment proceeding must be terminated.

XII. District Court Hearing

G.S.122C-267; 122C-268; 122C-286

A district court hearing must be held within 10 days of the day the respondent is taken into custody; a continuance of not more than five days may be granted by the court. Hearings may be held in the facility where respondent is being treated or in the judge's chambers.¹² The hearing may not be held in a regular courtroom over objection of the respondent if in the discretion of a judge a more suitable place is available. The hearing must be closed to the public unless the respondent requests otherwise.

A. Inpatient Commitment: Respondent's *presence may be waived* by counsel in writing; respondent has the right to confront and cross-examine witnesses. Respondent must be represented by counsel.

B. Outpatient Commitment:

1. **Place:** Hearings may be held at the *area facility* where respondent is being treated (if located in the judge's judicial district) or in the *judge's chambers*.
2. **Proposed treatment provider's presence:** Upon motion of the proposed outpatient treatment physician, the court may grant a continuance of not more than five days. In addition, the proposed outpatient treatment physician may be present and may provide testimony.
3. **Respondent's Presence:** Unlike the hearing for inpatient commitment where respondent's presence may be waived, the respondent *must be present* at the outpatient hearing and may be subpoenaed if necessary.
4. **Counsel:** Respondent *need not, but may be represented by counsel*. Counsel is assigned for an indigent respondent only if the court determines that the complexity of issues makes it necessary or that respondent is unable to speak for himself.

C. Substance Abuse Commitment: A hearing for this purpose is similar to outpatient commitment hearings in the following manner.

¹² This applies to inpatient and substance abuse hearings.

1. **Proposed treatment provider's presence:** Upon motion of the court, the respondent, the responsible professional, or the State, the court may grant a continuance of not more than five days. The petitioner and the responsible professional of the area authority, or the proposed treating physician or her designee, may be present and may provide testimony.
2. **Respondent's presence:** The respondent ***must be present*** and may be subpoenaed if necessary.

However, some of the features of the inpatient hearing apply.

3. **Counsel:** This hearing retains some of the due process protections of the inpatient commitment hearing: respondent may be represented by counsel of her choice, or if indigent within the meaning of § 7A-450, ***must be represented*** by court-appointed counsel; respondent has the right to confront and cross-examine witnesses.

XIII. Findings and Disposition

G.S. 122C-271

To support a commitment order, the judge must find by ***clear, cogent, and convincing evidence*** that the respondent meets the criteria for commitment. The court must record the facts that support its findings. The respondent must be discharged and the facility in which she was last treated so notified if the court finds that the commitment criteria are not met. If the commitment criteria are met, the court may make the following dispositions:

A. Outpatient commitment hearing: If an examining physician/psychologist has recommended outpatient commitment and the respondent has been released pending the district court hearing, the court may order outpatient commitment to for a period not in excess of ***90 days***.

- Before ordering outpatient commitment, the court must make findings of fact as to the ***availability of outpatient treatment***.
- The court must show on the order the outpatient ***treatment center*** or ***physician*** who is to be responsible for the management and supervision of the respondent's outpatient commitment.

B. Inpatient commitment hearing: If the respondent has been held in a 24-hour facility pending the district court hearing for inpatient commitment, the court may make the following dispositions:

(a) Outpatient commitment may be ordered to an outpatient treatment center or physician for no more than **90 days**, if the outpatient commitment criteria are met.

- When an outpatient commitment order is issued for a respondent held in a 24-hour facility, the court may order respondent held for no more than **72 hours** in order for the facility to notify the designated outpatient center or physician of the respondent's treatment needs.
- The clerk of the court in the county where the facility is located must send a copy of the outpatient commitment order to the designated outpatient treatment physician or center.

(b) Inpatient commitment at a 24-hour facility may be ordered for a period not in excess of **90 days** if the inpatient commitment criteria are met.

(c) A combination of inpatient and outpatient commitment for not more than **90 days** may be ordered for a person who is mentally ill and dangerous to self or others.

C. Substance abuse hearing: If the court finds that the respondent meets the criteria for commitment, it must order commitment for a period not to exceed **180 days**.

- The court must show on the order **the area authority or physician** who is to be responsible for the management and supervision of the respondent's commitment and treatment.

XIV. Follow-up on *Inpatient* Commitment Order

G.S. 122C-277

A. Release:

- (1) **Discharge:** The attending physician in inpatient cases must discharge unconditionally inpatient committees at any time she determines that the respondent no longer meets the criteria for commitment.
- (2) **Conditional release:** The attending physician may release a respondent conditionally for periods not in excess of 30 days on specified medically appropriate conditions. Violations of the conditions are grounds for return of the respondent.
- (3) **Outpatient recommendation:** If the attending physician determines that the respondent meets the criteria for outpatient commitment, she may request the clerk of court to calendar a **supplemental hearing** to determine whether an outpatient commitment order should be issued.

- (4) **Notice** of discharge and conditional release must be given to the clerk of court of the county of commitment and the county in which the facility is located (DMH 5-79-01). Request for supplemental hearing should utilize DMH 5-76-01.

B. Planning with the area authority: If the committed respondent is from a single-portal area, the attending physician must plan jointly with the area authority as prescribed in the area plan before discharging or releasing the respondent.

XV. Follow-up on <i>Outpatient Commitment Order</i>	G.S. 122C-273; -274
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A. Scope of treatment: The designated physician or treatment center may prescribe or administer **reasonable and appropriate medication and treatment** that are consistent with accepted medical standards. Treatment may include medication, therapy, day-programming activities, training activities, and supervision of living arrangements. **Forced medication or forced detention for treatment is not permitted**, unless the respondent poses an immediate danger to himself or others and, in such cases, inpatient commitment proceedings shall be initiated.

B. Termination: At any time that the outpatient treatment physician or center finds that a respondent under an outpatient commitment order no longer meets the criteria for outpatient commitment, they must so notify the court and the case shall be terminated.

(Use form entitled, “*Notice of Commitment Change*,” **DMH 5-79-01**).

C. Respondent's Failure to Comply:

(1) **Hearing:** If respondent "clearly refuses to comply" with all or part of the prescribed treatment, the center or physician **must** make all reasonable efforts to solicit compliance, document these efforts, and report to the court with a **request for a supplemental hearing**. (Form **AOC-SP-221**) Upon receipt of the request, the clerk shall calendar a hearing to be held within 14 days and notify, at least 72 hours before the hearing, the petitioner, respondent (personal service), his attorney, if any, and the designated outpatient treatment provider.

- **Procedure:** The procedures for the hearing are the same as for outpatient commitment hearings, set forth at G.S. 122C-267. The court must determine whether the respondent has failed to comply and, if so, the reasons for noncompliance.
- **Disposition:** If the court determines that respondent has failed or refused to comply, the court may (a) upon probable cause to believe that respondent meets the criteria for inpatient commitment, **order an**

examination to determine the necessity for outpatient or inpatient commitment; (b) ***reissue or change the outpatient commitment order*** in accordance with G.S.122C-271; or (c) discharge respondent and ***dismiss the case***.

- (2) **Custody/Examination Order:** If respondent "fails to comply, but does not clearly refuse to comply" with all or part of the prescribed treatment after reasonable effort to solicit compliance, the center ***may*** request the court to order the respondent taken into ***custody for examination (AOC-SP-220)***. Upon receipt of this request, the clerk shall issue an order (AOC-SP-220) to a law enforcement officer to take respondent into custody and bring him before the designated outpatient treatment physician or center for examination.¹³ The law enforcement officer must turn the respondent over to the custody of the physician or center who shall conduct the examination and then release respondent. The officer may wait during the examination and return the respondent to his home after the examination.¹⁴

D. Supplemental hearings: In the case of outpatient commitments, supplemental hearings are requested

- by the physician/center when an outpatient commitment respondent ***clearly refuses to comply*** with prescribed treatment;
- by a ***respondent requesting discharge*** from an outpatient commitment order; or
- by the physician when the ***respondent intends to move*** to another county within the state (DMH 5-76-01).¹⁵

¹³ A magistrate does not have the authority to issue a custody/transportation order for persons who fail to comply with outpatient mental illness commitment; ***only the clerk of court*** is authorized to issue this order.

¹⁴ If a physician or psychologist determines that respondent meets the criteria for inpatient commitment, proceedings for inpatient commitment may be initiated, and this examination may be substituted for the first exam if a magistrate issues an order within six hours after the exam is performed.

¹⁵ G.S. §§ 122C-273; 122C-274. These conditions for a supplemental hearing apply as well to substance abuse commitments when respondent is treated on an outpatient basis, except that when a substance abuse respondent fails to comply with all or part of the prescribed treatment, a supplemental hearing is required only if the attending physician wants to place the respondent in a 24-hour facility for more than 45 days. G.S. §§ 122C-290; 122C-291. In addition, a supplemental hearing may be requested by a physician in order to determine whether a respondent under an inpatient commitment order should be released under an outpatient commitment order.

XVI. Follow-up on Substance Abuse Commitment Order G.S.122C-290; -293

- A. Scope of treatment:** The area authority or physician responsible for management and supervision of the commitment and treatment may prescribe or administer reasonable and appropriate treatment either on an **outpatient basis** or in a **24-hour facility**.
- B. Termination:** The area authority or physician designated in the commitment order shall unconditionally discharge a committed respondent at any time she determines that the respondent no longer meets the criteria for commitment. Notice of discharge and the reasons for release shall be reported in writing to the clerk of superior court of the county in which commitment was ordered. (Use form entitled, "*Notice of Commitment Change*," **DMH 5-79-01**).
- C. Respondent's Failure to Comply:**
- (1) **Area authority:** If a respondent whose treatment is provided on an outpatient basis fails to comply with all or part of the prescribed treatment *after reasonable effort to solicit compliance*, then the area authority or physician **may request** the magistrate or clerk to order respondent taken into custody for purpose of examination. (**AOC-SP-223**)
 - (2) **Clerk:** Upon receipt of this request, the magistrate or clerk **must issue an order** to a law enforcement officer to take respondent into custody and take him or her immediately to the designated area authority or physician for examination.
 - (3) **Law enforcement:** The law enforcement officer **must take respondent into custody** and turn the respondent over to the custody of the physician or area authority.
 - (4) **Area authority:** The physician or area authority **must conduct an examination** and either (a) **release** the respondent, or (b) have the respondent taken to a **24-hour facility** upon a determination that treatment in the facility will benefit respondent. If placement in a 24-hour facility is to exceed 45 consecutive days, the area authority or physician must notify the clerk of court by the 30th day and request a **supplemental hearing**.
 - (5) **Law Enforcement:** After examination, the officer providing transportation may have to take respondent to a 24-hour facility. If the 24-hour facility is located out-of-county, the sheriff of the county where respondent was taken into custody **must provide transportation**.
- D. Supplemental hearings:** In the case of substance abuse commitments, supplemental hearings are requested

- by the area authority / physician when the **respondent moves / intends to move** to another county within the state.
- by the area authority / physician when **placement beyond 45 consecutive days** in a 24-hour facility is sought; or
- by a **respondent requesting discharge** from a substance abuse commitment order.¹⁶

E. Local plan: Each area authority is required to develop a local plan with local law enforcement agencies, local courts, local hospitals, and local medical societies necessary to facilitate implementation of the substance abuse commitment process. G.S. 122C-294.

XVII. Rehearings

G.S. 122C-275; 122C-276; 122C-292

Rehearings are governed by the same notice and procedures as the initial hearing; respondent has the same rights he had at the initial hearing. (Notify clerk using form DMH 5-76-01.)

- A. Inpatient:** Fifteen days before the end of the period of commitment, if the attending physician determines that commitment beyond the initial period will be necessary, she shall notify the clerk, who shall calendar a rehearing. At the rehearing, the court may make the same dispositions authorized for the initial inpatient hearing, except that a second commitment order may be for additional periods not in excess of 180 days. No third or subsequent order shall be for a period longer than one year.
- B. Outpatient:** At least 15 days before the end of the period of commitment, if the outpatient treatment physician or center determines that respondent continues to meet the criteria for commitment, she shall notify the clerk and a rehearing shall be scheduled. If the physician determines that respondent no longer meets the criteria, then the physician shall notify the clerk who shall dismiss the case. At the rehearing, if the court determines that respondent no longer meets the criteria for commitment, then respondent shall be discharged. If respondent continues to meet the criteria, the court may order commitment for additional periods not in excess of 180 days.
- C. Substance abuse:** At least 15 days before the end of the period of commitment, if the area authority (qualified professional) or treating physician determines that respondent continues to meet the criteria for commitment, she shall notify the clerk and a rehearing shall be scheduled. If the physician determines that respondent no longer meets the criteria, then the physician shall notify the clerk who shall dismiss

¹⁶ G.S. §§ 122C-290; 122C-291.

the case. At the rehearing, if the court determines that respondent no longer meets the criteria for commitment, then respondent shall be discharged. If respondent continues to meet the criteria, the court may order commitment for additional periods not in excess of 365 days.

XVIII. Emergency Procedures

G.S.122C-262; -282

A. Mentally Ill: (MAGISTRATE NOT INVOLVED) Anyone, including a law enforcement officer, who has knowledge of an individual who both (a) **meets the inpatient commitment criteria** and (b) **requires immediate hospitalization** to prevent harm to himself or others, may transport the individual directly to an area facility or other place, including a State facility, for examination by a physician or eligible psychologist.¹⁷

mentally ill and dangerous to self or others
+
requires immediate hospitalization to prevent harm

- (1) **Physician's sworn certification (DMH 5-72-01-A):** If the physician determines that the individual meets the criteria required to support a petition for custody before the magistrate under § 122C-261(a), the physician shall so certify in writing before any official authorized to administer an oath. The certificate must also state the reason that the individual requires immediate hospitalization and, if the examiner knows or has reason to believe that the individual is mentally retarded, this also must be stated.
- (2) **Communication with court:** The physician or psychologist must send a copy of the certificate to the clerk of superior court by the most expeditious and reliable means. If it is anticipated that the clerk will not receive the copy within 24 hours (excluding weekends and holidays) of the time it is signed, then the physician or psychologist must also communicate his or her findings to the clerk by phone.
- (3) **Transportation to a 24-hour facility for second examination:** The physician's certificate (sworn statement) operates as a magistrate's custody order, and a law enforcement officer or other designated person shall provide transportation to a 24-hour facility.¹⁸ (The magistrate is not involved in the emergency procedure for a commitment based on mental illness.)

¹⁷ This does not apply to those persons subject to commitment solely as substance abusers.

¹⁸ The examination by the physician executing the certificate operates as the first examination that is normally conducted pursuant to a custody order, and a second examination is required at the 24-hour facility.

- (4) **Court review of certificate:** Upon receipt of the physician's or psychologist's certificate, the clerk of superior court must submit it to the Chief District Court Judge. The court must review the certificate within 24 hours (excluding weekends and holidays) for a finding of reasonable grounds. The clerk must notify the 24-hour facility of the court's findings by telephone.
- (5) **24-hour facility:** After receipt of notification that the District Court has found reasonable grounds for commitment, the usual commitment procedures apply.
- B. Substance Abusers: (MAGISTRATE INVOLVED)** When an individual **(a) subject to substance abuse commitment** (i.e., is a substance abuser and dangerous to himself or others) is also **(b) violent and requires restraint**, and **(c) when delay in taking the individual to a physician or eligible psychologist for examination would likely endanger life or property**, a law enforcement officer may take the person into custody, take him immediately before a magistrate, and petition for an order to take the individual directly to a 24-hour facility.

a substance abuser who is dangerous to himself or others
+
violent and requires restraint
+
delay creates a danger to life or property

- (1) **Only a law enforcement officer** may execute this emergency affidavit.
- (2) **The petition (AOC-SP-909M)** must not only state facts supporting a finding of substance abuse and dangerousness (i.e., the normal commitment criteria), but must also **state facts** that would support a finding that the individual subject to commitment is violent and requires restraint and that delay in taking him to a local physician would endanger life or property.
- (3) **Contrast to typical substance abuse custody order:** The individual is already in law enforcement custody before petitioner goes to the magistrate; the magistrate orders that the individual be taken directly to a 24-hour facility, rather than to a local physician or eligible psychologist.
- (4) **Standard for emergency order:** In addition to finding reasonable grounds to believe that the individual is probably a substance abuser and dangerous to himself or others, the magistrate or clerk of court must find by **clear, cogent, and convincing evidence** that delay in taking the respondent to a physician or eligible psychologist for examination would endanger life or property.

XIX. Other Transportation Orders

- A. **Transfer Between Facilities:** [G.S. 122C-206] Where transportation is needed to transfer certain persons from one 24-hour facility to another, a responsible professional at the original facility must notify the clerk of court or a magistrate, and the clerk of court or magistrate shall issue a custody order for transportation of the person. (Use form **AOC-SP-222**) This procedure applies to a respondent held at a 24-hour facility pending a district court hearing, a respondent already committed to a 24-hour facility, and minors and incompetent adults voluntarily admitted for mental illness or substance abuse.
- B. **Escape or Breach of Conditional Release** [G.S. 122C-205] In the case where a client escapes from a 24-hour facility or breaches a condition of release, the responsible professional must notify law enforcement agencies in the county of residence of client, the county where the facility is located, and the county where there are reasonable grounds to believe the client may be found. (Use form **DMH 5-82-02**.) Initial notification must be given by telephone communication. The responsible professional must divulge to law enforcement identifying and background information reasonably necessary under the circumstances to assure expeditious return of the client and protection of the general public. These procedures are followed for all clients of 24-hour facilities, except for voluntarily admitted, competent adults. In this case, the responsible professional must follow these procedures only if the client's condition presents a risk of harm to self, property, or others, or the client is likely to commit a felony or violent misdemeanor. Upon receipt of notice of an escape or breach of a condition of release, an "appropriate law enforcement officer" must take the client into custody and return to him or her to the 24-hour facility.



