



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 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 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.



North Carolina Involuntary Commitment Process

Layperson petition
Layperson completes petition in front of magistrate

Magistrate reviews petition & issues custody order

Officer transports respondent

Hospital ER or LME facility (1st exam)

Officer transports respondent

Clinician petition
Clinician completes petition & exam form (1st exam), then faxes to magistrate

Magistrate reviews petition & issues custody order

Officer transports respondent

24-hour facility (2nd exam)

Emergency petition*
Clinician completes exam form & emergency certificate (1st exam), submits to clerk of court for 24-hr. facility & local officer

Officer transports respondent pursuant to emergency certificate

District court judge reviews examination form

Hearing: Court orders release, outpatient, inpatient, or substance abuse commitment

*Use when respondent requires immediate hospitalization; procedure by-passes magistrate.



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 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.

FORMS

["Affidavit and Petition for Involuntary Commitment,"](#) AOC-SP-300, revised Sept., 2003.

["Findings and Custody Order Involuntary Commitment,"](#) AOC-SP-302, revised Dec., 2009.

["Findings and Order Involuntary Commitment Physician-Petitioner Recommends Outpatient Commitment,"](#) AOC-SP-305, revised Jan., 1998.

["Examination and Recommendation to Determine Necessity for Involuntary Commitment,"](#) DMH 5-72-01, revised Dec., 2009.

["Supplement to Support Immediate Hospitalization/Certificate,"](#) DMH 5-72-01-A, revised Sept., 2001.

STATE OF NORTH CAROLINA

File No.

_____ County

In The General Court Of Justice
District Court Division

IN THE MATTER OF:

Name, Address And Zip Code Of Respondent

**AFFIDAVIT AND PETITION FOR
INVOLUNTARY COMMITMENT**

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

Social Security No. Of Respondent

Date Of Birth

Drivers License No. Of Respondent

State

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:

(Check all that apply)

- 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 predictably result in dangerousness.
 - in addition to being mentally ill, respondent is also mentally retarded.
- 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.)

Name, Address And Zip Code Of Nearest Relative Or Guardian

Name, Address And Zip Code Of Other Person Who May Testify To Facts

Home Telephone No.

Business Telephone No.

Home Telephone No.

Business Telephone No.

Petitioner requests the court to issue an order to a law enforcement officer to take the respondent into custody for examination by a person authorized by law to conduct the examination for the purpose of determining if the respondent should be involuntarily committed.

SWORN AND SUBSCRIBED TO BEFORE ME

Signature Of Petitioner

Date

Name, Address And Zip Code Of Petitioner (Type Or Print)

Signature

- Deputy CSC Assistant CSC Clerk Of Superior Court Magistrate
- Notary (use only with physician or psychologist petitioner)

Relationship To Respondent

Date Notary Commission Expires

Home Telephone No.

Business Telephone No.

SEAL

Original-File Copy-Hospital Copy-Special Counsel Copy-Attorney General
(Over)

PETITIONER'S WAIVER OF NOTICE OF HEARING

I voluntarily waive my right to notice of all hearings and rehearings in which the Court may commit the respondent or extend the respondent's commitment period, or discharge the respondent from the treatment facility.

Signature Of Witness

Date

Signature Of Petitioner

County _____

In The General Court Of Justice
District Court Division

IN THE MATTER OF:

Name And Address Of Respondent

**FINDINGS AND CUSTODY ORDER
INVOLUNTARY COMMITMENT**

G.S. 122C-261, -263, -281, -283

Social Security No. Of Respondent

Date Of Birth

Drivers License No. Of Respondent

State

I. FINDINGS

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:

(Check all that apply)

- 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 predictably result in dangerousness.
 - In addition to being mentally ill, the respondent probably is also mentally retarded.
- 2. a substance abuser and dangerous to self or others.

CUSTODY ORDER

TO ANY LAW ENFORCEMENT OFFICER:

The Court ORDERS you to take the above named respondent into custody

- 1. and take the respondent for examination by a person authorized by law to conduct the examination. (A COPY OF THE EXAMINER'S FINDINGS SHALL BE TRANSMITTED TO THE CLERK OF SUPERIOR COURT IMMEDIATELY.)
 - IF the examiner finds that the respondent IS NOT a proper subject for involuntary commitment, then you shall take the respondent home or to a consenting person's home in the originating county and release him/her.
 - IF the examiner finds that the respondent IS mentally ill and a proper subject for outpatient commitment, then you shall take the respondent home or to a consenting person's home in the originating county and release him/her.
 - IF the examiner finds that the respondent IS mentally ill and a proper subject for inpatient commitment, then you shall transport the respondent to the 24-hour facility named below for temporary custody, examination and treatment pending a district court hearing.
 - IF the examiner finds that the respondent IS a substance abuser and subject to involuntary commitment, the examiner must recommend whether the respondent be taken to a 24-hour facility or released, and then you shall either release him/her or transport the respondent to the 24-hour facility named below for temporary custody, examination and treatment pending a district court hearing.
- 2. and transport the respondent directly to the 24-hour facility named below, for temporary custody, examination and treatment pending a district court hearing. (FOR PHYSICIAN/PSYCHOLOGIST PETITIONERS ONLY.)

Name Of 24-Hour Facility For Mentally Ill

Date

Or following facility designated by area authority:

Time

AM PM

Name Of 24-Hour Facility For Substance Abuser

Signature

Or following facility designated by area authority:

Deputy CSC Assistant CSC Clerk Of Superior Court
 Magistrate

NOTE TO MAGISTRATE OR CLERK:

If the respondent is mentally retarded in addition to being mentally ill, you must contact the area authority before issuing a custody order to determine the facility to which the respondent will be taken. If the area mental health authority where the respondent resides has a single portal plan, you must call the area authority to determine the appropriate 24-hour facility or other treatment before issuing any custody order.

NOTE TO ANY LAW ENFORCEMENT OFFICER:

You shall take the respondent into custody within 24 hours after the date this Order is signed. Without unnecessary delay after assuming custody, you shall take the respondent to an area facility for examination by a person authorized by law to conduct the examination; if an authorized examiner is not immediately available in the area facility, you shall take the respondent to any authorized examiner locally available. If an authorized examiner is not available, you may temporarily detain the respondent in an area facility if one is available; if an area facility is not available, you may detain the respondent under appropriate supervision, in the respondent's home, in a private hospital or clinic, or in a general hospital, but not in a jail or other penal facility. **Complete the Return Of Service on the reverse and return to the Clerk of Superior Court immediately.**

II. RETURN OF SERVICE

Respondent WAS NOT taken into custody for the following reason:

I certify that this Order was received and served as follows:

Date Respondent Taken Into Custody		Time	<input type="checkbox"/> AM	<input type="checkbox"/> PM
Name Of Law Enforcement Officer		Signature Of Law Enforcement Officer		

A. PATIENT DELIVERY TO LOCAL EVALUATION SITE

- 1. The respondent was presented to an authorized examiner locally available as shown below.
- 2. The respondent was temporarily detained at the facility named below until the respondent could be examined by an authorized examiner locally available.

Date Presented	Time	<input type="checkbox"/> AM	<input type="checkbox"/> PM	Name Of Examiner
Name Of Local Facility		Name Of Law Enforcement Officer	Signature Of Law Enforcement Officer	

B. FOR USE AFTER PRELIMINARY EXAMINATION

- 1. Upon examination, the examiner named above found that the respondent is mentally ill and meets the criteria for outpatient commitment, or is a substance abuser and meets the criteria for commitment and the examiner recommends release pending a hearing. I returned the respondent to his/her regular residence or the home of a consenting person.
- 2. Upon examination, the examiner named above found that the respondent is mentally ill and meets the criteria for inpatient commitment, or is a substance abuser and meets the criteria for commitment and the examiner recommends that the respondent be held pending the district court hearing.
 - I transported the respondent and placed the respondent in the temporary custody of the facility named below for observation and treatment.
 - I placed the respondent in the custody of the agency named below for transportation to the 24-hour facility.
- 3. Upon examination, the examiner named above found that the respondent did not meet the criteria for inpatient or outpatient commitment. I returned the respondent to his/her regular residence or the home of a consenting person.

The examiner's written statement is attached. will be forwarded.

Name Of 24-Hour Facility	Date Delivered	Time Delivered	<input type="checkbox"/> AM	<input type="checkbox"/> PM	Date Of Return
Name Of Transporting Agency		Signature Of Law Enforcement Official			

C. FOR USE WHEN PETITIONER IS PHYSICIAN/PSYCHOLOGIST

(NOTE: Section II above **MUST** be completed. Sections A and B should **NOT** be completed.)

I transported the respondent directly to and placed him/her in the temporary custody of the facility named below.

Name Of 24-Hour Facility	Date Delivered	Time Delivered	<input type="checkbox"/> AM	<input type="checkbox"/> PM	Date Of Return
Name Of Transporting Agency		Signature Of Law Enforcement Official			

D. FOR USE WHEN ANOTHER AGENCY TRANSPORTS THE RESPONDENT

I took custody of the respondent from the officer named above, transported the respondent and placed him/her in the temporary custody of the facility named below for observation and treatment.

Name Of 24-Hour Facility	Date Delivered	Time Delivered	<input type="checkbox"/> AM	<input type="checkbox"/> PM	Date Of Return
Name Of Person Taking Custody of Respondent		Signature Of Person Taking Custody Of Respondent			

E. FOR USE WHEN STATE FACILITY TRANSFERS WITHOUT ADMISSION

Pursuant to G.S. 122C-261(f), I took custody of the respondent from the state 24-hour facility named above, where he/she was not admitted, and transported the respondent and placed him/her in the temporary custody of the facility named below for observation and treatment.

Name Of Facility To Which Transferred	Date Delivered	Time Delivered	<input type="checkbox"/> AM	<input type="checkbox"/> PM	Date Of Return
Name Of Transporting Agency		Signature Of Law Enforcement Or State Facility Official			

_____ County

In The General Court Of Justice
Superior Court Division

IN THE MATTER OF:

Name And Address Of Respondent

**FINDINGS AND ORDER
INVOLUNTARY COMMITMENT
PHYSICIAN-PETITIONER
RECOMMENDS OUTPATIENT COMMITMENT**

G.S. 122C-261

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.*

FINDINGS

The petitioner in this case is a physician/eligible psychologist who has recommended outpatient commitment/substance abuse commitment with the respondent being released pending hearing.

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:

- mentally ill and in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness.
- a substance abuser and dangerous to himself/herself or others.

ORDER

It is ORDERED that a hearing before the district court judge be held to determine whether the respondent will be involuntarily committed.

Date

Signature

- Deputy CSC
- Assistant CSC
- Clerk Of Superior Court
- Magistrate

NOTE TO CLERK: *Schedule an initial hearing for the respondent pursuant to G.S. 122C-264 or G.S. 122C-284 and give notice of the hearing as required by those statutes.*

County _____

File # _____

Client Record # _____

Film # _____

**EXAMINATION AND RECOMMENDATION TO
 DETERMINE
 NECESSITY FOR INVOLUNTARY COMMITMENT**

Name of Respondent:	Age	DOB	Sex	Race	M.S.
Address (Street, Box Number, City, State, Zip (use facility address after 1 year in facility):			County:		
			Phone:		
Legally Responsible Person <input type="checkbox"/> Next of Kin (Name and Address)			Relationship:		
			Phone:		
Petitioner (Name and address)			Relationship:		
			Phone		

The above-named respondent was examined on _____, 20__ at _____ o'clock ____.M. at _____
 _____ OR, I examined the respondent via telemedicine technology on _____ 20__ at
 _____ o'clock ____.M. Included in the examination was an assessment of the respondent's: (1) current and previous mental illness or
 mental retardation including, if available, previous treatment history; (2) dangerousness to self or others as defined in G.S. 122C-3 (11*); (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. (1) current and previous substance abuse including, if available, previous treatment history;
 and (2) dangerousness to himself or others as defined in G.S. 122C-3 (11*). The following findings and recommendations are made based on
 this examination. For telemedicine evaluations only: I certify to a reasonable degree of medical certainty that the results of the examination
 via telemedicine were the same as if I had been personally present with the respondent OR The respondent needs to be taken to a facility for
 a face to face evaluation. (*Statutory Definitions are on reverse side)

SECTION I - CRITERIA FOR COMMITMENT

Inpatient. It is my opinion that the respondent is: mentally ill; dangerous to self; dangerous to others
 (1st Exam – Physician or Psychologist) in addition to being mentally ill is also mentally retarded
 (2nd Exam – Physician only) none of the above

Outpatient. It is my opinion that: the respondent is mentally ill
 (Physician or Psychologist) the respondent is capable of surviving safely in the community with available supervision
 based upon the respondent's treatment history, the respondent is in need of treatment in order
 to prevent further disability or deterioration which would predictably result in dangerousness
 as defined by G.S. 122C-3 (11*)
 the respondent's current mental status or the nature of his illness limits or negates his/her
 ability to make an informed decision to seek treatment voluntarily or comply with
 recommended treatment
 none of above

Substance Abuse. It is my opinion that the respondent is: a substance abuser
 (1st Exam – Physician or Psychologist; 2nd Exam – If 1st dangerous to himself or others
 exam done by Physician, 2nd exam may be done by Qual. Prof.) none of the above

SECTION II – DESCRIPTION OF FINDINGS

Clear description of findings (findings for each criterion checked above in Section I must be described):

over

Notable Physical Conditions:

Current Medications (medical and psychiatric)

Impression/Diagnosis:

SECTION III - RECOMMENDATION FOR DISPOSITION

- Inpatient Commitment for _____ days (respondent must be mentally ill **and** dangerous to self or others)
- Outpatient Commitment (respondent must meet **ALL** of the first four criteria outlined in Section I, **Outpatient**)
- Proposed Outpatient Treatment Center or Physician: (Name) _____
(Address and Phone Number) _____
- LME notified of appointment: (Name of LME and date) _____
- Substance Abuse Commitment (respondent must meet both criteria outlined in Section I, **Substance Abuse**)
 - Release respondent pending hearing - Referred to: _____
 - Hold respondent at 24-hour facility pending hearing – Facility: _____
- Respondent does not meet the criteria for commitment but custody order states that the respondent was charged with a violent crime, including a crime involving assault with a deadly weapon, and that he was found not guilty by reason of insanity or incapable of proceeding: therefore, the respondent will not be released until so ordered following the court hearing.
- Respondent or Legally Responsible Person Consented to Voluntary Treatment
- Release Respondent and Terminate Proceedings (insufficient findings to indicate that respondent meets commitment criteria)
- Respondent was held 7 days from issuance of custody order but continues to meet commitment criteria. A new petition will be filed.
- Other (*Specify*) _____

_____ M.D. Physician Signature _____ Signature/Title – Eligible Psychologist/Qualified Professional _____ Print Name of Examiner _____ Address or Facility _____ City and State _____ Telephone Number	This is to certify that this is a true and exact copy of the Examination and Recommendation for Involuntary Commitment _____ Original Signature – Record Custodian _____ Title _____ Address or Facility _____ Date NOTE: Only copies to be introduced as evidence need to be certified
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CC: Clerk of Superior Court where petition was initiated (initial hearing only)
 Clerk of Superior Court where 24-hour facility is located or where outpatient treatment is supervised
 Respondent or Respondent’s Attorney and State’s Attorneys, when applicable
 Proposed Outpatient Treatment Center or Physician (Outpatient Commitment); Area Program / Physician (Substance Abuse Commitment)
 NOTE: If it cannot be reasonably anticipated that the clerk will receive the copies within 48 hours of the time that it was signed, the physician or eligible psychologist/qualified professional shall communicate his findings to the clerk by telephone.

***STATUTORY DEFINITIONS**

“Dangerous to self”. Within the relevant past: (a) the individual has acted in such a way as to show: (1) 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 (2) that there is a reasonable probability of his suffering serious physical debilitation within the near future unless adequate treatment is given. 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 (b) the individual has attempted suicide or threatened suicide and that there is a reasonable probability of suicide unless adequate treatment is given; or (c) the individual has mutilated himself or attempted to mutilate himself and that there is a reasonable probability of serious self-mutilation unless adequate treatment is given. NOTE: Previous episodes of dangerousness to self, when applicable, may be considered when determining reasonable probability of physical debilitation, suicide, or self-mutilation.

“Dangerous to others”. Within the relevant past, the individual has inflicted or attempted to inflict or threatened to inflict 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 that there is a reasonable probability that this conduct will be repeated. Previous episodes of dangerousness to others, when applicable, may be considered when determining reasonable probability of future dangerous conduct.

“Mental illness”. (a) when applied to an adult, 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; and (b) when applied to a minor, a mental condition, other than mental retardation alone, that so lessens or impairs the youth’s capacity to exercise age adequate self-control and judgment in the conduct of his activities and social relationships so that he is in need of treatment.

“Substance abuser”. An individual who engages in 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.

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

Signature of Physician or Eligible Psychologist

Address: _____

City State Zip: _____

Telephone: _____

Date/Time: _____

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-262 (d), 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.

CC: 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 Saturday, Sunday and holidays) of the time that it was signed, the physician or eligible psychologist shall also communicate the findings to the clerk by telephone.

TO LAW ENFORCEMENT: See back side for Return of Service

RETURN OF SERVICE			
<input type="checkbox"/> Respondent WAS NOT taken into custody for the following reason:			
<input type="checkbox"/> I certify that this Order was received and served as follows:			
<i>Date Respondent Taken into Custody</i>	<i>Time</i>		
	<input type="checkbox"/> AM <input type="checkbox"/> PM		
<i>Name of 24-Hour Facility</i>	<i>Date Delivered</i>	<i>Time Delivered</i>	<i>Date of Return</i>
		AM <input type="checkbox"/> PM <input type="checkbox"/>	
<i>Name of Transporting Agency</i>	<i>Signature of Law Enforcement Official</i>		

Memorandum to Magistrates 2009 Change to Commitment Law and Magistrate Practice

The shortage of suitable 24-hour facilities for persons in need of mental health evaluation and treatment has received significant attention in the past year. The purpose of this memo is to inform magistrates about recent legislation enacted to address one aspect of this problem, and to caution magistrates to avoid a practice, currently relied upon in some parts of the State, that is not authorized by law.

New Law

Session Law 2009-340 (House Bill 243), effective October 1, 2009, is a legislative acknowledgement that many persons who are found mentally ill and dangerous to self or others at the first commitment examination are not proceeding to the next step in the commitment process in a timely manner. Statutory law requires that these persons (known as “respondents”) be taken to a 24-hour psychiatric facility for a second examination and treatment pending a commitment hearing in district court. This hearing must take place within 10 days from the time the respondent was taken into law enforcement custody at the beginning of the commitment process. Because the state-operated psychiatric hospitals do not have sufficient bed space, many respondents are kept waiting in community hospital emergency rooms for several days. By the time some of these respondents arrive at a state hospital, the clerk of court does not even have time to calendar a hearing within the 10-day time frame.

This 10-day hearing requirement is one of North Carolina’s statutory mechanisms for assuring that a respondent is not deprived of liberty without the due process guaranteed by the U.S. Constitution. The new law is a response to the concern that delays in transporting respondents to psychiatric inpatient facilities may deprive some respondents of statutory and constitutional due process. S.L. 2009-340 amends G.S. 122C-261(d) and -263(d) to provide that, with respect to respondents who have been found to meet the inpatient commitment criteria, if a 24-hour facility is not immediately available or medically appropriate seven days after issuance of the custody order, a physician or psychologist must report this fact to the clerk of superior court and the proceedings must be terminated. If this happens, a new commitment proceeding may be initiated by filing a petition for a new custody order, but affidavits filed and examinations conducted as part of the previous commitment proceeding may not be used to support a new commitment. Certainly, some of the facts considered by the magistrate in deciding to issue the first custody order may be relevant when deciding to issue another custody order—and for this reason a new petition may in some cases contain facts that were asserted on the previous petition—but any papers filed and examinations conducted in support of a new proceeding must be new.

In situations where a respondent is temporarily detained at the site of first examination because a 24-hour facility is not immediately available or medically appropriate, S.L. 2009-340 also permits a physician or psychologist to terminate the inpatient commitment proceeding and discharge the respondent (or recommend outpatient commitment), upon finding that the respondent’s condition has improved to the point that he or she no longer meets the criteria

for inpatient commitment. Any such finding must be documented in writing and reported to the clerk of superior court.

A Practice to be Avoided

It is not at all surprising that legal and medical professionals confronted with the current crisis presented by a shortage of available 24-hour facilities craft creative responses in an effort to improve the way the system responds to citizens in need of help. One practice currently being employed by some magistrates, however, is inconsistent with the law and presents significant problems for other participants in the system. This practice consists of holding a commitment petition and not issuing a custody order until the availability of a particular 24-hour facility has been confirmed. The result is that the facility performing the first evaluation must hold a respondent for the period—sometimes days, as discussed above— without this hold being authorized by a custody order. Without a custody order, this hold is not authorized by the commitment statutes (subject to an exception not relevant to magistrates), raising serious issues about the due process rights of the respondent as well as questions about the potential liability of the facility exerting custodial control over the respondent without a custody order. Accordingly, magistrates should not engage in this modification of the statutory procedure. When a magistrate receives a petition and makes a determination that reasonable grounds exist to believe that an individual meets the statutory criteria for commitment, the law is clear that a magistrate must issue a custody and transportation order. The commitment statutes do not authorize a magistrate to delay issuance of a custody order pending the receipt of other information. Nor do the statutes permit a magistrate to make his or her decision subject to criteria not identified in the commitment statutes.

In the space on the custody order for designating a 24-hour facility, the magistrate should enter the name of the facility normally used by the jurisdiction, followed by the words “or any state-approved facility.” This allows the commitment process to proceed without delay and permits the involuntary detention of the respondent throughout all phases of the commitment process, including during the time it takes following the first examination to identify an available 24-hour facility. Moreover, some 24-hour facilities may not agree to accept an involuntary patient until *after* a custody order has been issued. The magistrate’s role in this process is critically important, and it is absolutely essential that magistrates follow the statutory procedure in carrying out their responsibilities.

If you have questions or concerns about any of the information in this memo, contact the School of Government faculty member specializing in mental health law, Mark Botts. Mark can be reached by telephone (919-962-8204) or email (botts@sog.unc.edu).