
COMMITMENT ISSUES FOR LAW ENFORCEMENT

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I gratefully acknowledge the extensive research done in revising this publication by Ashby Ray, a Legal Intern with the Department of Justice and a law student at Campbell University Norman Adrian Wiggins School of Law. His contribution to this project has been substantial.

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INTRODUCTION

In the course of their duties, law enforcement officers are likely to encounter persons with mental disabilities, physical abnormalities, communication disorders and unusual behaviors. Law enforcement officers, both city and county, will be asked to serve orders on, and transport individuals who are the subject of mental commitment procedures. Involuntary mental commitments can seem complex and overwhelming to a law enforcement officer who is unfamiliar with the process. This publication is designed to give officers a reference tool when they are fulfilling their role in the commitment process. It is recommended that agencies develop a written departmental policy for how to handle the various issues that arise during the course of the involuntary commitment proceedings.

While navigating through the commitment process, it is important to keep certain underlying policies in mind. North Carolina's policy is to encourage voluntary admissions to facilities. It is further State policy that no individual shall be involuntarily committed to a twenty-four hour facility unless that individual is 1) mentally ill or a substance abuser, and 2) dangerous to self or others. All admissions and commitments must be accomplished under conditions that protect the dignity and constitutional rights of the individual. *N.C.G.S. §122C-201.*

I. OVERVIEW OF THE COMMITMENT PROCEDURES

A. OFFICER OR THIRD PARTY INITIATED

Anyone, including a law enforcement officer, who has knowledge of an individual who is mentally ill and is either dangerous to self or others, or in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness, may appear before a clerk of superior court or magistrate and execute an affidavit to this effect. If the clerk or magistrate finds reasonable grounds to believe that the facts alleged in the affidavit are true, he shall issue an order to a law enforcement officer, or any other person authorized, to take the respondent into custody for examination by a physician or eligible psychologist at an area facility. However, if the individual is also mentally retarded, the clerk or magistrate shall contact the area authority before issuing the order and the area authority will designate the facility to which the respondent should be taken. *N.C.G.S. §122C-261(b).* An area authority is defined in *N.C.G.S. §122C-3(1)* as the area mental health, developmental disabilities, and substance abuse authority. The clerk or magistrate in the county where the respondent resides, or is found, has the jurisdiction to issue these orders. Such orders are valid for 24 hours from the time they are issued.

The physician or eligible psychologist at the area facility has three options. He or she may recommend 1) outpatient commitment, 2) inpatient commitment, or 3) no commitment. If the recommendation is for inpatient commitment, the individual will then be transported by the law enforcement officer or other designated person to a twenty-four hour facility where a second examination will take place. (The physician or eligible psychologist at this facility has the same three options after the conclusion of this examination.) A twenty-four hour facility is defined as a facility that provides a structured living environment and services for a period of 24 consecutive hours or more and includes hospitals that are facilities under *N.C.G.S. §122C-3*. If, following the initial examination, the recommendation is for outpatient commitment or no commitment the officer designated on the custody order will transport the respondent home. Regardless of whether the

individual is committed or released, the law enforcement officer must execute the reverse side of the custody order and return the original to the magistrate or clerk of superior court. (See Figure A.)

B. PHYSICIAN OR ELIGIBLE PSYCHOLOGIST INITIATED

The commitment process may also be initiated by a physician or eligible psychologist who has seen the respondent. In this case the physician or eligible psychologist makes the determination that the individual meets the criteria for involuntary commitment. The physician or eligible psychologist is not required to appear before a magistrate. They may swear to an affidavit before any official authorized to administer an oath, such as a notary public. However, the magistrate or clerk must be notified of the physician's decision and agree that the person is subject to commitment and to the type of commitment recommended by the physician or eligible psychologist. If the physician or eligible psychologist recommends inpatient commitment and the clerk or magistrate finds probable cause to believe that the respondent meets the criteria for inpatient commitment, the clerk or magistrate will issue an order for the respondent to be taken into custody and transported to a twenty-four hour facility.

C. SPECIAL EMERGENCY PROCEDURES

This process is to be used only in the most unusual and extreme circumstances.

Anyone, including a law enforcement officer, who has knowledge of an individual who is subject to inpatient commitment and who requires *immediate* hospitalization to prevent harm to self or others, may transport the individual directly to an area facility, or state facility for the mentally ill, for examination by a physician or eligible psychologist. Upon examination by the physician or eligible psychologist, if the individual meets the criteria for inpatient commitment, the physician or eligible psychologist shall so certify in writing before any official authorized to administer oaths. If the physician or eligible psychologist executes the oath, appearance before a magistrate is waived. The physician or eligible psychologist would then send a copy of the certificate to the clerk of superior court. Anyone, including a law enforcement officer if necessary, may transport the individual to a twenty-four hour facility for examination and treatment pending a district court hearing. The physician or eligible psychologist certificate shall serve as the custody order and the law enforcement officer or other designated person shall provide transportation. *N.C.G.S. §122C-262.* (See Figure B.)

II. RESPONSIBILITIES AND AUTHORITY OF THE LAW ENFORCEMENT OFFICER

A. TAKING A RESPONDENT INTO CUSTODY

N.C.G.S. §122C-261(e) requires a law enforcement officer who receives a custody order from the clerk or magistrate to take the respondent into custody *within 24 hours* after the order is signed. If the respondent cannot be located and taken into custody within this twenty-four hour period, the order should be returned unserved. If the respondent is located after this time, the order would have to be reissued prior to taking the respondent into custody.

1. FORCIBLE ENTRY TO TAKE CUSTODY OF RESPONDENT

In *In re Reed*, 39 N.C. App. 227, 249 S.E.2d 864 (1978), the Court found that a custody order is analogous to an arrest warrant. Both function to deprive an individual of his liberty; one in a civil context, the other in a criminal context. A law enforcement officer may enter private premises in any of the following three situations to take a respondent into custody pursuant to a custody order.

First, an officer may enter the premises of the respondent under the same circumstances allowed for executing an arrest warrant. Which means the officer must

- ▶ have probable cause to believe that the person to be taken into custody is on the premises;
- ▶ have given or made a reasonable effort to give the occupant notice of his presence unless there is reasonable cause to believe that giving such notice would present a clear danger to human life; and
- ▶ have the signed custody order in his possession.

If, after these conditions are satisfied, the officer reasonably believes his admittance onto the premises is being denied or unreasonably delayed, the officer may use force to enter.

Second, in accordance with *N.C.G.S. §15A-285*, an officer may enter buildings, vehicles, and other premises if he reasonably believes that doing so is *urgently necessary* to save a life, prevent serious bodily harm, or avert or control a public catastrophe.

Third, an officer may enter private premises when consent is given by an appropriate resident. Consent must be given by the person whose premises are to be entered or by a person who, by ownership or otherwise, is reasonably and apparently entitled to give or withhold consent. For example, assume the respondent and a third party share an apartment. The third party may give an officer permission to enter common areas of the apartment such as a kitchen or living room. However, the third party cannot consent to the officer entering areas of the apartment over which he does not possess common authority, such as the respondent's bedroom or private bath. If the respondent is in the residence of a third party and the third party refuses to give consent to law enforcement to enter and take custody of the respondent, the officer must weigh all the facts and circumstances to determine whether or not the situation rises to the level of urgent necessity as discussed in *N.C.G.S. §15A-285* or whether an additional court order to gain entry should be sought.

2. USE OF FORCE TO TAKE RESPONDENT INTO CUSTODY

In providing transportation pursuant to a commitment order the law enforcement officer may use *reasonable force* to restrain the respondent if it appears necessary to protect the officer, the respondent, or others. *N.C.G.S. §122C-251(e)*.

3. AUTHORITY UNDER TRANSPORTATION ORDERS

A transportation order is issued when a respondent who has been recommended for outpatient commitment has failed to meet requirements of his or her outpatient commitment status. A physician or the outpatient center will notify the clerk of superior court who will issue an order to law enforcement to pick up the respondent and transport him or her to the outpatient facility for evaluation. If the respondent resides in the city or is taken into custody in the city, then the city is responsible for transporting. Similarly, if the respondent lives in the county or is taken into custody in the county, then the county is responsible for the transportation. The officer may wait and return the respondent home after the evaluation. **In no event may a respondent released on a recommendation that he or she meets outpatient commitment criteria be physically forced to take medication or forcibly detained for treatment pending a district court hearing.** However, an out-patient respondent who is subject to a transportation order because he fails to comply with out-patient treatment may be transported without his/her consent to the evaluation center using reasonable force. If it appears that the respondent is dangerous to himself or herself or to others then involuntary inpatient commitment proceedings should be initiated. *N.C.G.S. §122C-265(a), (c), (e)*. (See Figure C.)

B. OBTAINING THE INITIAL EXAMINATION

1. WHERE TO TAKE THE RESPONDENT

After taking custody of the respondent, *N.C.G.S. §122C-263* requires the officer to transport the respondent to an area facility "without unnecessary delay." An area facility is operated by or under contract with the area authority and constitutes an entity whose primary purpose is to provide care, treatment, habilitation, and rehabilitation to the mentally ill, developmentally disabled, or substance abusers. At this facility, the respondent is to be examined by a physician or eligible psychologist. If a physician or eligible psychologist is not available in the area facility, the officer must take the respondent to "any physician or eligible psychologist locally available." If a physician or eligible psychologist is not immediately available, the respondent may be temporarily detained in an area facility if one is available. If an area facility is not available, the respondent may be detained under "appropriate supervision" in the respondent's home, a private hospital or clinic, a general hospital, or a state facility for the mentally ill. **However, the respondent may not be detained in a jail or other penal facility.**

2. REMAINING WITH THE RESPONDENT

A law enforcement officer shall remain with the respondent until the officer has determined that a physician or eligible psychologist at the area authority is available to conduct the examination. *N.C.G.S. 122C-263(a)*. It is also recommended that the law enforcement officer ensure that the respondent is left under appropriate supervision. Determining what is appropriate supervision will depend on the circumstances. Factors to consider include: whether the respondent appears violent, whether he or she has a history of violence, the type of facility where respondent is being examined (i.e., is it a secured facility) and, the personnel available to supervise the respondent (i.e., is there a

security guard or company police officer on site?). A law enforcement officer should use his or her best judgment in making this determination.

3. EXCEPTIONS TO THE INITIAL EXAM REQUIREMENT

The initial examination is unnecessary in two situations. The first is if a physician or eligible psychologist took out the custody order. *N.C.G.S. §122C-263(b)(1)*. The second is if the custody order states that the respondent was charged with a violent crime and was found incapable of proceeding. *N.C.G.S. §122C-263(b)(2)*. If the initial examination is not needed, the officer must transport the respondent directly to a 24-hour facility. A 24-hour facility is defined by *N.C.G.S. §122C-3* as a facility that provides a structured living environment and services for a period of 24 consecutive hours or more.

C. TRANSPORTING THE RESPONDENT FROM INITIAL EXAMINATION

1. INPATIENT COMMITMENT RECOMMENDED

If the physician or eligible psychologist recommends inpatient treatment, the law enforcement agency designated in the custody order is responsible for transporting the respondent to a 24-hour facility. If a 24-hour facility is unavailable and the respondent is unable to pay for care at a private facility, the designated law enforcement agency must transport the respondent to a state facility for the mentally ill.

2. OUTPATIENT OR NO COMMITMENT RECOMMENDED

If the physician recommends outpatient treatment, the law enforcement agency designated in the custody order is responsible for returning the respondent to either his residence or the home of a consenting third party. If the physician determines that the respondent needs neither inpatient nor outpatient treatment, *N.C.G.S. §122C-263* mandates that proceedings be terminated. *N.C.G.S. § 122C-263(d)(3)* also mandates that the person designated in the order to provide transportation shall 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 and the respondent shall be released from custody.

D. TRANSPORTING RESPONDENT TO AND FROM 24-HOUR FACILITY

1. TRANSPORTING WITHIN THE COUNTY

The law enforcement officer designated in the original custody order is responsible for transporting the respondent from the initial examination to the 24-hour facility if the facility is located within the county. If the respondent lives in the city or is taken into custody in the city, then the city is responsible for such transportation. If the respondent lives in the county or was taken into custody in the county, then the county has the responsibility to transport.

Likewise, upon the respondent's release from a 24-hour facility, the city has the duty to transport the respondent home if he or she lives inside city limits or was taken into custody inside city limits. Otherwise, the county is responsible for transporting the respondent home.

Cities and counties may contract with each other to provide these services. Additionally, the respondent being discharged may use his or her own transportation. N.C.G.S. §122C-251(b).

2. TRANSPORTING OUTSIDE THE COUNTY

If the respondent must be transported to a 24-hour facility in another county, then the county of the respondent's residence is responsible for the transportation. This will be true even if the respondent lives inside the city limits or was initially taken into custody inside the city. When the 24-hour facility is outside the county, transportation between counties upon discharge must be provided by the county of residence of the respondent.

E. CONSIDERATIONS IN TRANSPORTING A RESPONDENT

It is important to remember that individuals taken into custody under these laws have not committed a criminal offense. Law enforcement officers, to the extent possible, shall advise respondents when taking them into custody that they are not under arrest, but are being transported to receive treatment and for their own safety and for the safety of others. N.C.G.S. §122C-251(c).

Because the involuntary commitment process can be frightening and disorienting to the respondent, the law enforcement officer should make every effort to assure the respondent that he or she is there to help. The statute also says that, to the extent feasible, the transporting officer should be in plain clothes and travel in an unmarked vehicle. In addition, if the transporting officer is not of the same sex as the respondent, then an attendant of the same sex should accompany the law enforcement officer during transport. There is no requirement that this attendant be a sworn law enforcement officer. It may be appropriate to allow a member of the respondent's family to accompany the respondent during transport.

In providing the required transportation, N.C.G.S. §122C-251(e) states that the law enforcement officer "may use reasonable force to restrain the respondent if it appears necessary to protect self, the respondent or others." No law enforcement officer may be held criminally or civilly liable for an assault, false imprisonment, or other torts or crimes on account of *reasonable measures* taken under the authority of this article. N.C.G.S. §122C-251(e). In all cases, it is our recommendation that prior to transportation of a respondent, the transporting officer should contact dispatch and provide beginning mileage, location, destination and starting time. Upon reaching the destination the officer should again contact dispatch and give ending mileage, ending time and location.

F. RESPONSIBILITY FOR TRANSPORTING THE RESPONDENT

The clerk of court or magistrate will identify in the custody order the agency responsible for taking the respondent into custody and transporting him or her throughout the involuntary commitment process. That determination will be based on where the respondent lives or is taken

into custody. When the respondent is a resident of the city, or is taken into custody within the city limits, *N.C.G.S. §122C-251(a)* requires the city to transport the respondent. If the respondent lives outside the city limits and in the county, or is taken into custody outside the city limits, then the county must transport the respondent. If the respondent is to be transported to a facility outside the county then the county is responsible for the transportation regardless of whether the respondent resides in the city or the county. However, cities and counties may contract with each other to provide transportation. *N.C.G.S. §122C-251(a)*.

Additionally, a clerk, magistrate, or district court judge, may authorize the family or immediate friends of the respondent, if they so request, to transport the respondent in accordance with the procedures of this article. This authorization should only be granted in cases where the dangers to the public, the family or friends of the respondent, or to the respondent himself are not substantial. The family or immediate friends of the respondent must bear the cost of providing this transportation. *N.C.G.S. §122C-251(f)*.

The governing body of a city or county may adopt a plan for transportation in involuntary commitment proceedings. Law enforcement personnel, volunteers, or other public or private agency personnel may be designated to provide all or parts of the transportation required by involuntary commitment proceedings. Persons so designated shall be trained and the plan shall assure adequate safety and protection for both the public and the respondent. Law enforcement, other affected agencies, and the area authority must participate in the planning. If any person other than a law enforcement officer is designated to provide transportation, the person designated shall follow the procedures set up for a law enforcement officer to transport. *N.C.G.S. §122C-251(g)*.

G. COST OF TRANSPORTATION

According to *N.C.G.S. §122C-251(h)*, the cost and expenses of transporting a respondent to or from a twenty-four hour facility is the responsibility of the county of residence of the respondent. The state, a city, or a county that incurs expense in transporting a respondent is entitled to recover the reasonable costs of transportation from the county of residence of the respondent. The county of residence of the respondent is entitled to recover the reasonable cost of transportation it has paid to the State, a city or a county. The county of residence may recover that cost from:

- (1) the respondent, if the respondent is not indigent;
- (2) any person or entity that is legally liable for the respondent's support and maintenance provided there is sufficient property to pay the cost;
- (3) any person or entity that is contractually responsible for the cost; or
- (4) any person or entity that otherwise is liable under federal, state, or local law for the cost, provided that the respondent or other individual liable for the respondent's support is provided a reasonable notice and opportunity to object to the reimbursement

III. CONCLUSION

Commitment procedures for individuals may involve officers in situations which are outside of the range of their usual law enforcement duties. We hope this publication is helpful in defining officer's roles and responsibilities. Suggestions for the improvement of this publication or questions concerning officer's roles in the commitment process should be directed to the Law Enforcement Liaison section of the North Carolina Attorney General's Office.

FREQUENTLY ASKED QUESTIONS

Q. HOW LONG MUST THE LAW ENFORCEMENT OFFICER WAIT AFTER DELIVERING THE RESPONDENT FOR AN INITIAL EXAMINATION?

- A. A law enforcement officer must remain with the respondent until the officer has determined that a physician or eligible psychologist at the area authority is available to conduct the examination. *N.C.G.S. 122C-263(a)*. It is also advisable that the law enforcement officer not leave the respondent unless he or she is under appropriate supervision. Determining what is appropriate supervision will depend on the circumstances of each case. Factors to consider include: whether the respondent appears violent, whether he or she has a history of violence, the type of facility where respondent is being examined (for example, is it a secured facility?) and, the personnel available to supervise the respondent (i.e., is there a security guard or company police officer on site?).

Q. WHO IS RESPONSIBLE FOR TRANSPORTING THE RESPONDENT FROM THE INITIAL EXAMINATION IF OUTPATIENT COMMITMENT IS RECOMMENDED?

- A. If, after the initial examination, the physician or eligible psychologist recommends outpatient treatment, the person designated in the custody order to provide transportation shall 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, and the respondent shall be released from custody. *N.C.G.S. §122C-263(d)(1)(d)*.

Q. WHO HAS THE DUTY TO PROVIDE TRANSPORTATION DURING THE INVOLUNTARY COMMITMENT PROCESS?

- A. Transportation of respondent, including admission and discharge, shall be provided by either the city or the county. The clerk of court or magistrate will identify the agency responsible for taking respondent into custody and transporting him or her. That determination will be based on where the respondent lives or is taken into custody. 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 city limits or who is taken into custody outside of city limits. However, cities and counties may contract with each other to provide transportation. *N.C.G.S. §122C-251(a)*.

Q. WHO IS RESPONSIBLE FOR TRANSPORTING THE RESPONDENT FROM THE INITIAL EXAMINATION IF INPATIENT COMMITMENT IS RECOMMENDED?

- A. The law enforcement officer or agency designated in the initial custody order will transport the respondent from the initial examination to a twenty-four hour facility if the examining physician recommends inpatient commitment. *N.C.G.S. § 122C-263(d)(2), N.C.G.S. § 122C-261(e).*

Q. WHO MUST TRANSPORT THE RESPONDENT TO AND FROM THE APPROPRIATE TWENTY-FOUR HOUR FACILITY?

- A. The law enforcement officer or agency designated in the initial custody order will transport the respondent to and from the twenty-four hour facility. When the respondent is being moved to a twenty-four hour facility in another county, transportation should be provided by the county where respondent was taken into custody. Where respondent has requested a change of venue from one twenty-four hour facility to another twenty-four hour facility, transportation should be provided by the county where the petition for involuntary commitment was initiated. *N.C.G.S. §122C-251(b).* Upon release from a twenty-four hour facility in another county, the respondent's county of residence is responsible for providing transportation from the twenty-four hour facility. A respondent may provide his or her own transportation.

Q. WHAT ARE THE STATUTORY REQUIREMENTS FOR HOW A RESPONDENT SHOULD BE TRANSPORTED?

- A. *N.C.G.S. §122C-251(c)* provides that, law enforcement officers, to the extent possible, shall advise respondents when taking them into custody 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 for the safety of others. The statute also says that, to the extent feasible, the transporting officer should be in plain clothes and travel in an unmarked vehicle. In addition, the transporting officer or attendant should be of the same sex as the respondent unless the officer allows a member of the respondent's family to accompany the respondent.

Q. HOW DO YOU HANDLE TRANSPORTATION OF A RESPONDENT WHEN THE LAW ENFORCEMENT AGENCY REQUIRED TO TRANSPORT DOES NOT HAVE AN AVAILABLE OFFICER OF THE SAME SEX AS THE RESPONDENT?

- A. *N.C.G.S. §122C-251(d)* states that in providing transportation of respondent, the agency responsible for the transportation shall provide a driver or attendant who is the same sex as the respondent, unless a family member accompanies the respondent. Agencies are encouraged to attempt to get a family member to accompany the respondent during the process. If a family member is unavailable or unwilling and an agency does not have an officer who is the same sex as the respondent, the statute allows for an "attendant" to accompany the respondent with the officer during the transportation. There is no statutory requirement that the "attendant" be a sworn law enforcement officer. If an agency does not have someone of the same sex as the respondent working as a law enforcement officer,

the respondent could be accompanied by anyone of the same sex. The details of who may and will serve as an attendant should be worked out in advance by agencies that might find themselves in this position. *N.C.G.S. § 122C-294* requires each area authority to develop a local plan with local law enforcement agencies and courts for the commitment process. Such details can be worked out according to this plan or through departmental policy.

Q. WHAT ARE THE POSSIBLE CIVIL RIGHTS VIOLATIONS OR CONCERNS THAT ARISE FROM COMMITMENT PROCEEDINGS?

- A. No law enforcement officer may be held criminally or civilly liable for an assault, false imprisonment, or other torts or crimes on account of *reasonable measures* taken under the authority of this article. *N.C.G.S. §122C-251(e)*.

Questions of law enforcement liability will most frequently arise when an officer has taken action pursuant to *N.C.G.S. §122C-262*, special emergency procedure for individual requiring immediate hospitalization. Such claims are usually based on an alleged violation of respondent's Fourth Amendment right. *Gooden v. Howard County, MD.* 917 f.2d 1355,1361 (4th cir. 1990). Such claims are scrutinized to determine if the officer had "probable cause" to believe the respondent is "both mentally ill and that her mental illness made her a danger to herself or others." *Gooden* at 1363. If the respondent claims that excessive force was used, the officer's conduct must be evaluated "from the perspective of a reasonable officer on the scene," and the "tense, uncertain, and rapidly evolving" circumstances must be taken into consideration. *Janicsko v. Pellman*, 774 F.Supp. 331, 340 (M.D.PA. 1991).

Q. HOW MUCH FORCE MAY A LAW ENFORCEMENT OFFICER USE TO RESTRAIN A RESPONDENT DURING THE COMMITMENT PROCESS?

- A. A law enforcement officer may use reasonable force to restrain the respondent if it appears necessary to protect himself, the respondent, or others. *N.C.G.S. §122C-251(e)*.

Q. WHAT IS A TRANSPORTATION ORDER AND WHAT ARE THE LAW ENFORCEMENT OFFICER'S RESPONSIBILITIES REGARDING TRANSPORTATION ORDERS FOR RESPONDENTS WHO HAVE FAILED TO COMPLY WITH OUTPATIENT TREATMENT?

- A. A transportation order is issued when a respondent who has been recommended for outpatient commitment has failed to meet requirements of his or her outpatient commitment status. A physician or the outpatient center will notify the clerk of superior court who will issue an order to law enforcement to pick up the respondent and transport him or her to the outpatient facility for evaluation. The officer may wait and return the respondent home after the evaluation. **In no event may a respondent released on a recommendation that he or she meets**

outpatient commitment criteria be physically forced to take medication or forcibly detained for treatment pending a district court hearing. If it appears that the respondent is dangerous to himself or herself or to others, then involuntary inpatient commitment proceedings should be initiated. *N.C.G.S. §122C-265(a)(c)(e).*

Q. WHAT IS THE DIFFERENCE BETWEEN A CUSTODY ORDER AND A TRANSPORTATION ORDER?

- A. A custody order is issued by a magistrate or clerk or deputy clerk of superior court when there is probable cause to believe that the respondent (the person named in the custody order) may pose a serious threat of harm to self or to others and should be hospitalized to prevent harm or a worsening of the condition. *N.C.G.S. §122C-261(a).* A custody order is given the same treatment as a warrant for arrest and a law enforcement officer may use reasonable force to detain, take custody of and transport the respondent. (See page 3 of this publication.)

A transportation order, on the other hand, is issued when a respondent who has been recommended for outpatient commitment has failed to fulfill or complete the requirements of the commitment order. A physician or the outpatient treatment facility notifies the clerk of superior court who will issue an order to law enforcement to transport the respondent to the outpatient facility for evaluation. No force may be used to detain or transport the respondent or to force him or her to take medication. *N.C.G.S. §122C-265(c).* A respondent who is subject to a transportation order may be transported without his/her consent to the evaluation center. If it appears that the respondent needs inpatient commitment to prevent harm to him/herself or others, then involuntary commitment proceedings should be reinitiated from the beginning of the process. *N.C.G.S. § 122C-265(e).*

Q. WHAT IS CONSIDERED THE RESPONDENT'S COUNTY OF RESIDENCE?

- A. The county of residence for the respondent is the county of his or her domicile at the time of his or her admission or commitment to a facility. A county of residence is not changed because the respondent is temporarily out of his or her county in a facility or otherwise. *N.C.G.S. §122C-3(10).*

Q. DO WE NEED ANY KIND OF PLAN OR AGREEMENT WITH AREA FACILITIES OR HOSPITALS TO KNOW HOW TO PROCEED WITH AN INVOLUNTARY COMMITMENT ORDER?

- A. Yes, *N.C.G.S. §122C-294* requires that each area authority shall develop a local plan with local law enforcement agencies, local courts, local hospitals, and local medical societies necessary to facilitate implementation of the involuntary commitment process. If your agency is unaware of a plan contact your local area authority and discuss your concerns with them.

Q. WHAT IS AN “AREA AUTHORITY”?

- A.** N.C.G.S. §122C-3(1) defines area authority as the area mental health, developmental disabilities, and substance abuse authority.

APPENDIX A

AOC COMMITMENT FORMS

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-262

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 physician or eligible psychologist 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

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

STATE OF NORTH CAROLINA

File No

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, -28

Social Security No. Of Respondent

Date Of Birth

Drivers License No. Of Respondent

State

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 physician or eligible psychologist. (A COPY OF THE EXAMINER'S FINDINGS SHALL BE TRANSMITTED TO THE CLERK OF SUPERIOR COURT.)
 - 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 port 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 physician or eligible psychologist; if a physician or eligible psychologist is not immediately available in the area facility, you shall take the respondent to any physician or eligible psychologist locally available. If a physician or psychologist 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.

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

AM PM

ON PRELIMINARY EXAMINATION

- 1. The respondent was presented to a physician or eligible psychologist locally available as shown below.
- 2. The respondent was temporarily detained at the facility named below until the respondent could be examined by a physician or eligible psychologist locally available.

Date Presented

Time

AM PM

Name Of Examiner (Physician Or Eligible Psychologist)

Name Of Local Facility

- 1. Upon examination, the examiner named above found that the respondent is mentally ill and does meet 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

AM
 PM

Date Of Return

Name Of Transporting Agency

Signature Of Law Enforcement Official

FOR PHYSICIAN/PSYCHOLOGIST PETITIONER

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

AM
 PM

Date Of Return

Name Of Transporting Agency

Signature Of Law Enforcement Official

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

AM
 PM

Date Of Return

Name Of Transporting Agency

Signature Of Law Enforcement Official

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

AM
 PM

Date Of Return

Name Of Transporting Agency

Signature Of Law Enforcement Or State Facility Official

STATE OF NORTH CAROLINA

Fee No.

In The General Court Of Justice
District Court Division

County

IN THE MATTER OF:

Name Of Respondent

INVOLUNTARY COMMITMENT ORDER
MENTALLY ILL

G.S. 122C-267, 122C-268, 122C-271

FINDINGS

The Court finds that:

1. The petitioner was represented by counsel. The respondent was represented by counsel.
 was not was not

Based on the evidence presented, the Court

2. by clear, cogent and convincing evidence finds as facts all matters set out in the physician's/eligible psychologist's report, specified below, and the report is incorporated by reference as findings.

Date Of Last Examiner's Report

Name Of Physician/Eligible Psychologist

3. by clear, cogent and convincing evidence finds these other facts:

4. finds that the respondent does not meet the criteria for commitment.
 5. finds that this proceeding was begun after the respondent was charged with a violent crime and was found incapable of proceeding.

CONCLUSIONS

Based on the above findings, the Court concludes that the respondent:

1. is mentally ill.
 2. is not mentally ill.
 3. in addition to being mentally ill, is mentally retarded.
 4. is dangerous to self others.
 5. is not dangerous to self or others.
 6. (only for nondangerous mentally ill) is capable of surviving safely in the community with available supervision from family, friends or others; and based on respondent's psychiatric history, the respondent is in need of treatment in order to prevent further disability and deterioration which would predictably result in dangerousness to self or others. And, that the respondent's inability to make an informed decision to voluntarily seek and comply with recommended treatment is caused by:
 the respondent's current mental status.
 the nature of the respondent's mental illness.

NOTE: Use AOC-SP-911M for involuntary commitment of defendant found not guilty by reason of insanity.

ORDER

It is ORDERED that:

- 1. the respondent be committed/recommitted to the inpatient 24-hour facility named below for the period specified.
- 2. the respondent be committed/recommitted to outpatient commitment under the supervision and management of the center/physician named below for the period specified.
 - the respondent may be held at the 24-hour facility where he/she is now being held, for up to 72 hours in order for the facility to notify the designated outpatient center of respondent's treatment needs.
- 3. the respondent be committed/recommitted to an inpatient 24-hour facility named below not to exceed the specified period. Following discharge from the 24-hour facility, the respondent shall be committed to outpatient commitment under the supervision of the center/physician named below for the specified period.
- 4. the respondent be discharged and this matter dismissed.
- 5. the respondent be discharged. Since the respondent was charged with a violent crime and found incapable of proceeding, it is further ordered that the respondent be released to the custody of the law enforcement agency named below.

Name Of Law Enforcement Agency

- 6. this matter be transferred to the county named below for further proceedings.

County

INPATIENT COMMITMENT

OUTPATIENT COMMITMENT

Committed/recommitted to inpatient facility for a period not to exceed

- _____ days.
- 90 days.
- 180 days.
- 1 year.

Committed/recommitted to outpatient facility for a period not to exceed

- _____ days.
- 90 days.
- 180 days.

Name And Address Of 24-Hour Facility

Name And Address Of Treatment Center/Physician

Date

Signature Of District Court Judge

Name Of District Judge (Type Or Print)

STATE OF NORTH CAROLINA

File No.

In The General Court Of Justice
District Court Division

County

IN THE MATTER OF:

Name And Address Of Respondent

TRANSPORTATION ORDER
FOR RESPONDENT ALREADY
UNDER COMMITMENT ORDER

G.S. 122C-206, -265(a), -273(a), -284

REQUEST FOR TRANSPORTATION ORDER

- 1. The respondent named above has been recommended for outpatient commitment by an examining physician different from the undersigned proposed outpatient physician. The respondent has failed to appear for examination at the designated time. The undersigned requests that the respondent be taken to the center or physician named below for evaluation.
- 2. The respondent named above has been placed on outpatient commitment and the undersigned is responsible for the management supervision of the respondent's outpatient commitment. The respondent has failed to comply with the prescribed treatment after reasonable efforts have been made to solicit his compliance. The undersigned requests that the respondent be taken to the center or physician named below for evaluation.
- 3. *(The magistrate is authorized to sign the order for transfer.)* The respondent named above is currently being held at the _____ 24-hour facility. Transportation is needed to the 24-hour facility named below. The undersigned requests that the respondent be taken to the 24-hour facility named below for placement.
- 4. *(The magistrate is authorized to sign the order for noncomplying substance abuser.)* The respondent named above has been placed on substance abuse commitment and the undersigned is responsible for the management and supervision of the respondent's substance abuse commitment. The respondent has failed to comply with prescribed treatment on an outpatient basis after reasonable efforts have been made to solicit compliance. The undersigned requests that the respondent be taken to the center or physician named below for evaluation and then to a 24-hour facility if necessary.

Name Of Center/Physician/24-hour Facility	Date Of Request
Address	Signature Of Person Making Request
City, State, Zip	Title
Telephone	Name Of Person Making Request (Type Or Print)

ORDER

To Any Law Enforcement Officer:

You are ORDERED to take the respondent into custody and to take him immediately to the center/physician/24-hour facility listed above.

Date
Signature
<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court <input type="checkbox"/> Magistrate (applicable to Nos. 3 and 4 above only)

RETURN OF SERVICE

I certify that this Order was received and served by taking the respondent into custody and taking him to the center/physician/24-hour facility listed on the front.

<i>Date Respondent Taken Into Custody</i>	<i>Time</i> <input type="checkbox"/> AM <input type="checkbox"/> PM
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In addition to taking the respondent to the facility listed on the front, at the examiner's request, I then transported the respondent and placed him in the custody of the 24-hour facility listed below.

<i>Name Of 24-hour Facility To Which Delivered</i>	<i>Date Delivered</i>	<i>Time</i> <input type="checkbox"/> AM <input type="checkbox"/> PM
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The respondent was not taken into custody for the following reason:

<i>Date Order Received</i>	<i>Signature Of Law Enforcement Official</i>
<i>Date Of Return</i>	<i>Name Of Transporting Agency</i>

FOR USE WHEN ANOTHER AGENCY TRANSPORTS TO 24-HOUR FACILITY

I took custody of the respondent from the center/physician listed on the front and, at that examiner's request, transported the respondent and placed him in the custody of the 24-hour facility named below.

<i>Name Of 24-hour Facility</i>	<i>Date Order Received</i>	<i>Date Of Return</i>
	<i>Signature And Rank Of Law Enforcement Official</i>	
<i>Date Delivered</i>	<i>Time</i> <input type="checkbox"/> AM <input type="checkbox"/> PM	<i>Name Of Transporting Agency</i>

NOTE TO LAW ENFORCEMENT OFFICERS: *There is no statutory time limit for serving this Order. If block 1, 2, or 3 is checked under the request on the front, the officer only has to take the respondent to the center/physician/24-hour facility listed on the front. If block 4 is checked, an officer has to take the respondent to the center/physician listed on the front and then after examination, may have to take the respondent to a 24-hour facility. If the 24-hour facility is located out-of-county, the sheriff must provide that transportation.*