

INVOLUNTARY COMMITMENT PROCESS

N.C.G.S. Chapter 122C

NORTH CAROLINA CIVIL
COMMITMENT MANUAL



NORTH CAROLINA CIVIL COMMITMENT MANUAL

2006

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OVERVIEW OF MANUAL

- WWW.NCIDS.ORG
 - “Reference Materials”
 - Civil Commitment
- Purpose of Manual
 - Assist Attorneys in representing respondents or minors facing a commitment
- Eight Chapters
 - Every conceivable admission and commitment under N.C.G.S. Chapter 122C
 - Forms and Motions/Collateral Consequences/Capacity



Commitments and Admissions: Quick Summary

Involuntary Commitment for Mental Health Treatment

- Law applies to adults and minors
- District Court hearing within 10 days of date respondent taken into custody
- Maximum term of 90 days inpatient commitment at initial hearing
- Maximum term of 180 days inpatient commitment at first rehearing, and maximum of one year inpatient commitment at second and subsequent rehearings

Involuntary Commitment for Substance Abuse Treatment

- Law applies to adults and minors
- District Court hearing within 10 days of date respondent taken into custody
- Commitment is to the treatment of an area authority or physician rather than to a 24-hour facility
- Treatment may be on either inpatient or outpatient basis, as determined by area authority or physician
- Maximum term of 180 days of substance abuse commitment, with maximum of one year substance abuse commitment at second and subsequent rehearings
- Maximum 45 consecutive days of inpatient treatment without a supplemental hearing

Outpatient Commitment

- Law applies to adults and minors
- District Court hearing within 10 days of date respondent taken into custody
- Appointment of counsel in discretion of court
- Treatment on outpatient basis, not in a 24-hour facility
- Can be initiated either by physician or eligible psychologist, or recommended by examiner or attending physician at any stage in the involuntary commitment process

Voluntary Admission

- By application of guardian of the person or general guardian of incompetent adult—judicial review required and attorney appointed
- By application of legally responsible person for minor—judicial review required and attorney appointed
- By application of competent adult—judicial review not required and no attorney appointed



Commitment and Admission through Criminal Justice System

- Automatic commitment following verdict of not guilty by reason of insanity
- Defendant found incapable of proceeding
- Special provisions for commitment and admission of inmates and parolees

Admissions Not Requiring Judicial Review

- By advance instruction
- By application of health agent appointed pursuant to health care power of attorney



Overview of Pre-hearing Process

- Affidavit and Petition
 - AOC-SP-300
- Magistrate's Hearing
- Custody Order
 - AOC-SP-302
- First Evaluation
 - 5-72
- Second Evaluation
 - 5-72
- 10 day Hearing in District Court



Chapter 2: Involuntary Commitment of Adults and Minors for Mental Health Treatment

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2.1 Overview of Involuntary Commitment Process

Right to counsel. Involuntary commitment is the judicial procedure for compelling persons to receive mental health treatment, either on an inpatient or outpatient basis. Special Counsel or an appointed attorney represents all minors and incompetent adults in inpatient proceedings, as well as all indigent adults who have not arranged for private representation, because there is restriction on freedom of movement throughout the process. Special Counsel and appointed attorneys represent respondents through all stages of the proceedings for inpatient treatment, including through the conclusion of any appeal. Appointment of counsel for indigent adults in outpatient commitment proceedings is discretionary with the court. Non-indigent competent adults have the right to hire private counsel.

Statutory procedures. The statutory involuntary commitment procedures apply to both adults and minors. Chapter 122C of the North Carolina General Statutes outlines the typical commitment procedures:

- initiation of the process by petition before a magistrate or the clerk of superior court;
- custody and transport of the respondent for an initial examination by a



INVOLUNTARY MENTAL HEALTH

- AFFIDAVIT AND PETITION
 - Before Magistrate or Clerk
 - In County of residence or of location
 - Sworn, signed by Petitioner
 - Allegations: “mentally ill” and “dangerous to self or others”
 - Based upon personal knowledge or hearsay
 - May allege Mental Retardation



A. Affidavit and Petition Before Clerk or Magistrate

Affidavit and petition. Involuntary commitment begins with an individual appearing before either the clerk of superior court or a magistrate to file a petition seeking the involuntary commitment of another person. The petition is filed in either the county in which the respondent resides or is present. The petitioner must have knowledge that the person “is mentally ill and either (i) dangerous to self . . . or dangerous to others, . . . or (ii) in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness. . . .” G.S. 122C-261(a). An affidavit containing the underlying facts supporting the request for commitment is executed by the petitioner. *See infra* Appendix A, Form AOC-SP-300.

The statute also requires the affiant to state if there is reason to believe the respondent is also mentally retarded. G.S. 122C-261(a). This is necessary because state policy is to treat people who are mentally retarded in facilities separate from those dedicated to treating people with mental illness alone. The clerk or magistrate must therefore contact the area authority prior to issuing a custody order for a person alleged to be mentally retarded, and the area authority must designate the facility to which the person will be taken for examination. G.S. 122C-261(b).

Case law: Unsworn petition and petition without facts supporting conclusory statements are grounds for dismissal.

In re Ingram, 74 N.C. App. 579 (1985).

Unsworn petition. The North Carolina Court of Appeals held that failure of a petition to be signed by oath or affirmation before a duly authorized certifying officer is ground for dismissal of the petition. In *Ingram*, decided under former statutory provision G.S. 122-58.3, now G.S. 122C-261, the respondent’s husband filed an unsworn petition. The district court received testimony and ordered involuntary commitment of the respondent for up to 90 days. The appellate court held that the statutory requirements for the signing of the petition under oath must be “followed diligently,” and that failure to do so deprived the respondent of “liberty without legal process.”

Although a motion to dismiss based upon an unsworn petition should be granted, counsel should advise the respondent of the possible consequences. Because an order of dismissal on this basis is not *res judicata*, the original petitioner or a current treatment provider may file a sworn petition that could initiate a new involuntary commitment proceeding. Prevailing on the motion to dismiss could serve in effect as an unwanted continuance because the hearing date would be within 10 days of the respondent being taken into custody on the new petition.



A. Affidavit and Petition Before Clerk or Magistrate

Affidavit and petition. Involuntary commitment begins with an individual appearing before either the clerk of superior court or a magistrate to file a petition seeking the involuntary commitment of another person. The petition is filed in either the county in which the respondent resides or is present. The petitioner must have knowledge that the person “is mentally ill and either (i) dangerous to self, . . . or dangerous to others, . . . or (ii) in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness. . . .” G.S. 122C-261(a). An affidavit containing the underlying facts supporting the request for commitment is executed by the petitioner. *See infra* Appendix A, Form AOC-SP-300.



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No facts supporting conclusory statements. The petition must contain facts supporting the allegations that the respondent is mentally ill and dangerous to self or others. In *Ingram*, the petition stated:

“Respondent has strange behavior and irrational in her thinking. Leaves home and no one knows of her whereabouts, and at times spends night away from home. Accuses husband of improprieties.”

74 N.C. App. at 579.

The Court held that the paragraph quoted above contained conclusory statements that did not constitute facts alleging mental illness and danger to self or others. They did not form a sufficient basis for a determination of reasonable grounds for issuance of a commitment order. *Id.* at 581.

Filing a motion to dismiss based upon the insufficiency of the allegations in the petition may be a better strategy than moving to dismiss because of an unsworn petition, as it is based more upon the substance of the case. The petitioner would not be allowed to refile a petition with the same allegations and the original petitioner might not have observed the more recent actions of the respondent. On the other hand, the attending physician at the facility might have sufficient information upon which to file a new petition. This might lead to a delay in the hearing, just as with a dismissal based upon the technical insufficiency of the petition. Counsel should discuss the pros and cons of filing a motion to dismiss with the client to enable the client to make an informed decision on how to proceed.

Case law: Petition may be based on hearsay.

In re Zollicoffer, 165 N.C. App. 462 (2004). The North Carolina Court of Appeals has affirmed that it is permissible for a petition for involuntary commitment to be based upon hearsay information. In *Zollicoffer*, the respondent appealed the failure of the lower court to grant his motion to dismiss the petition based upon the hearsay contained therein. The Court held that there was no requirement that the petition be based upon first-hand knowledge, and that the petition before the magistrate [or clerk of superior court], which the Court characterized as a hearing, was not subject to the rules of evidence.

B. Custody Order for Examination

The clerk or magistrate must first review the petition to determine if there are “reasonable grounds to believe that the facts alleged in the affidavit are true. . . .” G.S. 122C-261(b). If so, there must be a determination of whether the respondent is “probably mentally ill and either (i) dangerous to self . . . , or dangerous to others . . . , or (ii) in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness. . . .” *Id.* If these



Ch. 2: Involuntary Commitment for Mental Health Treatment

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“Respondent has strange behavior and irrational in her thinking. Leaves home and no one knows of her whereabouts, and at times spends night away from home. Accuses husband of improprieties.”

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The Court held that the paragraph quoted above contained conclusory statements that did not constitute facts alleging mental illness and danger to self or others. They did not form a sufficient basis for a determination of reasonable grounds for issuance of a commitment order. *Id.* at 581.



Involuntary Commitment for Mental Health Treatment: Checklist for Respondents' Attorneys

This checklist applies after Special Counsel or the appointed attorney receives notice of the patient's admission. Consult the indicated forms as necessary.

Receipt and Review of Documents

- Receive petition or affidavit of physician or eligible psychologist, accompanied by affidavit(s) of examiner. This will occur by different methods depending on local practice. Counsel should inquire of the clerk of court and the records clerk of the facility to determine local practice.
- Review documents for compliance with statutory requirements:

Petition (Form AOC-SP-300)

- Is petition signed and sworn before an authorized officer? G.S. 122C-261(a).
- Was the petition properly clocked in with a date and time stamp?
- Is box 1, alleging mental illness and danger to self or others, checked?
- Do the allegations in the petition support on their face a finding of reasonable grounds to believe that the respondent is mentally ill and either dangerous to self or others or in need of treatment to prevent further disability or deterioration that would predictably result in dangerousness?
- Who does the petition indicate are witnesses to the behaviors and actions alleged in the petition?

Findings and Custody Order Involuntary Commitment (Form AOC-SP-302)

- Is the Custody Order properly signed and dated with the time noted by the appropriate court official?
- Is box 1, alleging mental illness and danger to self or others under "Findings," checked?
- Is box 1 and/or 2 checked under "Custody Order"?
- Does the "Return of Service" on the back indicate that the respondent was taken into custody within 24 hours of issuance of the custody order?
- Did the law enforcement officer complete either Section A, B, C, or D appropriately on the back of the custody order?

Affidavit of Examining Physician or Eligible Psychologist (First Examination Report) (Form DMH 572-01)

- Was the examination performed within 24 hours of the time the respondent was taken into custody of the law enforcement officer?
- Was the first examination performed by either a physician or eligible psychologist?
- Is the examination report properly signed?



Petition (Form AOC-SP-300)

- Is petition signed and sworn before an authorized officer? G.S. 122C-261(a).
- Was the petition properly clocked in with a date and time stamp?
- Is box 1, alleging mental illness and danger to self or others, checked?
- Do the allegations in the petition support on their face a finding of reasonable grounds to believe that the respondent is mentally ill and either dangerous to self or others or in need of treatment to prevent further disability or deterioration that would predictably result in dangerousness?
- Who does the petition indicate are witnesses to the behaviors and actions alleged in the petition?



_____ 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-261

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



IN THE MATTER OF:

**AFFIDAVIT AND PETITION FOR
INVOLUNTARY COMMITMENT**

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

Name, Address And Zip Code Of Respondent

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.

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In re Zollicoffer, 165 N.C. App. 462 (2004). The North Carolina Court of Appeals has affirmed that it is permissible for a petition for involuntary commitment to be based upon hearsay information. In *Zollicoffer*, the respondent appealed the failure of the lower court to grant his motion to dismiss the petition based upon the hearsay contained therein. The Court held that there was no requirement that the petition be based upon first-hand knowledge, and that the petition before the magistrate [or clerk of superior court], which the Court characterized as a hearing, was not subject to the rules of evidence.



Filing a motion to dismiss based upon the insufficiency of the allegations in the petition may be a better strategy than moving to dismiss because of an unsworn petition, as it is based more upon the substance of the case. The petitioner would not be allowed to refile a petition with the same allegations and the original petitioner might not have observed the more recent actions of the respondent. On the other hand, the attending physician at the facility might have sufficient information upon which to file a new petition. This might lead to a delay in the hearing, just as with a dismissal based upon the technical insufficiency of the petition. Counsel should discuss the pros and cons of filing a motion to dismiss with the client to enable the client to make an informed decision on how to proceed.



MAGISTRATE'S HEARING

- The hearing is *ex parte*;
- Respondent has no right to counsel;
- Not subject to the Rules of Evidence;
- May be based upon hearsay;
- Procedural defenses to Affidavit:
 - Unsigned;
 - Unsworn;
 - failure of personal appearance by petitioner;
 - Admitted fabrication;
 - Conclusions alleged without supporting facts.



CUSTODY ORDER

- Magistrate finds “reasonable grounds to believe facts alleged are true.”
- Allows LEO to take respondent into custody for first examination
- Order must be served within 24 hours or new order required
- Allows LEO to use reasonable force necessary to take custody



Involuntary Commitment for Mental Health Treatment: Checklist for Respondents' Attorneys

This checklist applies after Special Counsel or the appointed attorney receives notice of the patient's admission. Consult the indicated forms as necessary.

Receipt and Review of Documents

- Receive petition or affidavit of physician or eligible psychologist, accompanied by affidavit(s) of examiner. This will occur by different methods depending on local practice. Counsel should inquire of the clerk of court and the records clerk of the facility to determine local practice.
- Review documents for compliance with statutory requirements:

Petition (Form AOC-SP-300)

- Is petition signed and sworn before an authorized officer? G.S. 122C-261(a).
- Was the petition properly clocked in with a date and time stamp?
- Is box 1, alleging mental illness and danger to self or others, checked?
- Do the allegations in the petition support on their face a finding of reasonable grounds to believe that the respondent is mentally ill and either dangerous to self or others or in need of treatment to prevent further disability or deterioration that would predictably result in dangerousness?
- Who does the petition indicate are witnesses to the behaviors and actions alleged in the petition?

Findings and Custody Order Involuntary Commitment (Form AOC-SP-302)

- Is the Custody Order properly signed and dated with the time noted by the appropriate court official?
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- Is box 1 and/or 2 checked under "Custody Order"?
- Does the "Return of Service" on the back indicate that the respondent was taken into custody within 24 hours of issuance of the custody order?
- Did the law enforcement officer complete either Section A, B, C, or D appropriately on the back of the custody order?

Affidavit of Examining Physician or Eligible Psychologist (First Examination Report) (Form DMH 572-01)

- Was the examination performed within 24 hours of the time the respondent was taken into custody of the law enforcement officer?
- Was the first examination performed by either a physician or eligible psychologist?
- Is the examination report properly signed?



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- Is box 1 and/or 2 checked under “Custody Order”?
- Does the “Return of Service” on the back indicate that the respondent was taken into custody within 24 hours of issuance of the custody order?
- Did the law enforcement officer complete either Section A, B, C, or D appropriately on the back of the custody order?



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.



STATE OF NORTH CAROLINA

File No. _____

_____ County

In The General Court Of Justice
District Court Division**IN THE MATTER OF:****FINDINGS AND CUSTODY ORDER
INVOLUNTARY COMMITMENT**

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

*Name And Address Of Respondent**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 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.

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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 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 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.



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- 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.
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 - 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 <input type="checkbox"/> AM <input type="checkbox"/> PM
Name Of 24-Hour Facility For Substance Abuser	Signature
Or following facility designated by area authority:	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court <input type="checkbox"/> 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

AM PM

A. FOR USE AFTER PRELIMINARY EXAMINATION

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

AM PM

Name Of Examiner

Name Of Local Facility

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

AM

Date Of Return

PM

Name Of Transporting Agency

Signature Of Law Enforcement Official



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			

B. FOR USE WHEN PETITIONER IS PHYSICIAN/PSYCHOLOGIST

- 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			

C. 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 Transporting Agency	Signature Of Law Enforcement Official			

D. 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			



EMERGENCY CERTIFICATE

STATE OF NORTH CAROLINA
Department of Health and Human Services
Division of Mental Health, Developmental Disabilities, and Substance Abuse Services

SUPPLEMENT TO EXAMINATION AND RECOMMENDATION FOR
INVOLUNTARY COMMITMENT

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)

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



CUSTODY

STATE OF NORTH CAROLINA
Department of Health and Human Services
Division of Mental Health, Developmental Disabilities, and Substance Abuse Services

SUPPLEMENT TO EXAMINATION AND RECOMMENDATION FOR
INVOLUNTARY COMMITMENT

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> AM <input type="checkbox"/> PM <input type="checkbox"/>	<i>Date of Return</i>
<i>Name of Transporting Agency</i>	<i>Signature of Law Enforcement Official</i>		



FIRST EXAMINATION

- Performed by physician or psychologist;
- Performed within 24 hours after arrival at local facility;
- Must be a personal examination;
- Examiner determines if Criteria are met: MI, Dangerous;
- Also considers Survivability, Resources, Capacity



D. Custody and Transport to First Examination

The law enforcement officer or other authorized person is to take the respondent into custody within 24 hours after the order is issued. G.S. 122C-261(e). A new custody order must be obtained if the time expires without custody being assumed. The law enforcement officer has no authority to assume custody after the order expires, and a respondent taken into custody without a valid order would have grounds to move to dismiss the petition.

After being taken into custody, the respondent must be transported to an area facility for examination by a physician or eligible psychologist. G.S. 122C-263(a). If there is no physician or eligible psychologist at the area facility available to perform the examination, the respondent may be taken to any physician or eligible psychologist in the local area. Occasionally, neither a physician nor an eligible psychologist is immediately available, in which case the respondent may be temporarily detained pending examination. Temporary detention is allowed in an area facility, if available, in the respondent's home under appropriate supervision, in a private hospital or clinic, in a general hospital, or in a State facility for the mentally ill. The statute specifically provides that the temporary detention may not be in a jail or other penal facility. *Id.*

E. First Examination Requirements

Factors to be evaluated. The physician or eligible psychologist must perform the examination as soon as possible, and no later than 24 hours after respondent's arrival. G.S. 122C-263(c); *see infra* Appendix A, Form DMH 5-72-01.



County _____ File # _____
EXAMINATION AND RECOMMENDATION TO DETERMINE
NECESSITY FOR INVOLUNTARY COMMITMENT Film # _____
Client Record # _____

NAME OF RESPONDENT:	AGE	BIRTHDATE	SEX	RACE	M.S.
ADDRESS (Street, Apt., Route, 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 _____.

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. *See Statutory Definitions 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 the 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):



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) _____

- 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)
- Other (Specify) _____

_____ M.D. <div style="text-align: center;">Physician Signature</div>	This is to certify that this is a true and exact copy of the Examination and Recommendation for Involuntary Commitment
_____ Signature/Title - Eligible Psychologist/Qualified Professional	_____ Original Signature - Record Custodian
_____ Print Name of Examiner	_____ Title
_____ Address or Facility	_____ Address or Facility
_____ City and State	_____ Date
<input type="checkbox"/> () or <input type="checkbox"/> () Telephone Number	NOTE: Only copies to be introduced as evidence need to be certified.

Original: Medical Record

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 and State's Attorneys, when applicable
 Proposed Outpatient Treatment Center or Physician (Outpatient Commitment/Area Program or 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.



Second Examination

- Transport to 24 hour Facility for Admission
- A physician must perform a second exam;
- Physician cannot be first examiner nor psychologist;
- Failure to perform is fatal procedural error, vacating commitment;
- Admission as involuntary inpatient subjects respondent to Restraints and Seclusion 122C-60;



I. Second Examination by Physician

A physician must perform a second examination within 24 hours of the respondent's admission to a 24-hour facility. The examiner cannot be the physician who performed the first examination or an eligible psychologist. As with the initial examination, the respondent must be assessed to determine if the criteria for inpatient or outpatient commitment are present. Again, if the criteria for neither are present, the respondent must be released. G.S. 122C-266(a); *see infra* Appendix A, Form DMH 5-72-01.

Inpatient. If the criteria for inpatient commitment are met, the respondent is held at the 24-hour facility pending the district court hearing. G.S. 122C-266(a)(1).



DISTRICT COURT HEARING

- Must be held within 10 days of custody on involuntary admission;
- Closed to Public;
- Criteria: Mentally Ill and Dangerous;
- May be continued;
- Release pending hearing results in dismissal of action;
- Initial commitment is 90 days; then 180; then 365
- Split commitment possible.



self and others?

- Does the examiner's report recommend inpatient commitment?

Recommendation: _____

Medical Records Review

- Review records in patient's chart(s) at 24-hour facility.
- Do Progress Notes contain staff observations of manifestation of symptoms of mental illness?
- Do Progress Notes contain staff observations of dangerous behavior toward self or to others? _____
- Results of drug testing: _____
- Current medications: _____
- Psychological examination or other special examinations or reports?
- Any pending criminal charges noted in record? _____

Interview with Client

Attorney role:

- Meet with client as soon as possible.
- Explain you represent client, no one else.



J. Evidence: Inpatient Commitment

Burden of proof. The Attorney General assigned to a State facility or the UNC Hospitals Psychiatric Services will present evidence on behalf of the State. G.S. 122C-268(b). As noted in § 2.5B *supra*, there is no statutory mandate for representation of the petitioner at other facilities. The burden is on the petitioner, however, to prove by “clear, cogent, and convincing evidence that the respondent is mentally ill and dangerous to self, . . . or dangerous to others. . . .” G.S. 122C-268(j).

Admissible certified copies. The petitioner is allowed to present “[c]ertified copies of reports and findings of physicians and psychologists and previous and current medical records. . . .” G.S. 122C-268(f). A respondent has the right, however, to confront and cross-examine witnesses. *Id.* It is unclear whether a petitioner can initially offer certified documents only, forcing the respondent to object. If so, who is then responsible for subpoenaing the witness? If the petitioner can first offer the documents without the witness, the proceeding will likely have to be continued to give the witness time to appear. This scenario forces the respondent to endure a delay in the hearing to enforce the right to cross-examine.

Inadmissibility of voluntary admission. The statutes specifically prohibit the admission of evidence regarding a voluntary admission in a hearing on involuntary inpatient commitment. G.S. 122C-208.

Case law: Admission of physician’s report when physician does not appear at hearing constitutes denial of respondent’s right to confront and cross-examine witness.

In re Hogan, 32 N.C. App. 429 (1977). In *Hogan*, the State’s only evidence was the written report of the physician who performed the second examination of the respondent, admitted over respondent’s objection. The respondent called as a



Court stated that this denial would “at least entitle respondent to a new hearing.” *Id.* at 433. The Court reversed the order, however, on the ground that the findings of fact in the order did not support the finding that the respondent was imminently dangerous to herself (under the old statute) and that there was not any competent evidence to support that finding. *Id.* at 433–34.

In re Mackie, 36 N.C. App. 638 (1978). As in *Hogan*, discussed above, the North Carolina Court of Appeals addressed the issue of admission of a physician’s written report without his appearance. In *Mackie*, the petitioner testified at respondent’s rehearing and stated that she had not seen the respondent in almost eight months. The only other evidence presented by the State was the written report of a physician at Broughton Hospital.

The Court held that incorporating the physician’s written report by reference into the order by the lower court constituted a denial of respondent’s right to confront and cross-examine a witness. As the only other evidence presented was the testimony of the petitioner, there was no evidence supporting the lower court’s findings of mental illness and danger to self or others, and the order was reversed. *Id.* at 640.

Hearsay. Counsel for respondent must be vigilant in objecting to hearsay testimony. Admission of a written report over the objection of respondent is grounds for reversal of an order of commitment absent other competent supporting evidence, as illustrated by the above cases.

Other hearsay evidence may be harder to recognize. A staff person may begin to testify to an incident illustrating a danger to self or others without having witnessed the occurrence. Respondent’s attorney may have to object when the testimony begins in order to ascertain whether the witness’s knowledge is first-hand. A physician may be allowed to testify to hearsay contained in the medical records as part of the basis of a psychiatric diagnosis. Counsel should still object and request that, if the court allows the testimony, it be admitted for the limited purpose of explaining the diagnosis and that it not be considered on the issue of danger.

Witnesses. The respondent’s attorney must determine, in consultation with the respondent as appropriate, who to call as a witness and what documents to subpoena. Some of these decisions may depend on the strength of the petitioner’s case. For example, if the petitioner presents a weak case, counsel might recommend that the respondent not testify and thus not be subject to cross-examination. Some respondents will feel that their cases have not been fully presented if they have not testified. If the client insists on exercising the right to testify, counsel should make a written note in the file of the advice given not to testify.



MENTAL ILLNESS

- 122C-3(21): An illness which so lessens the capacity of the individual to use self control, judgment, and discretion in the conduct of affairs and social relations as to make it necessary or advisable for him to be under treatment, care, supervision, guidance or control.



N.C.G.S. § 8C-1, R. EVID. 702

- If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence, or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education may testify thereto in the form of an opinion or otherwise.



THE MENTAL HEALTH EXPERT

- Alphabet Soup:
 - MD, DO, PhD, PsyD, EdD, ABPP, LCSW, MSW, PA, BCD, MPH, MPA, MA, MS, LPC, CRC



QUALIFYING AS AN EXPERT

- **Academic Training**
 - Graduation with a Degree
 - MD or DO for medicine/psychiatry
 - PhD or PsyD for Psychology (possibly EdD)
 - LCSW masters degree
 - Accredited Program
- **Supervised Experience**
 - Internship
 - Residency
 - Specialty Fellowships
 - Member of Treatment Team
- **Licensure**
- **Board Certification**



SCHIZOPHRENIA

- DSM-IV: Diagnostic and Statistical Manual of Mental Disorders
- Characterized by:
 - Delusions,
 - Hallucinations,
 - Disorganized Speech,
 - Grossly Disorganized Behavior or Catatonic;
 - Negative Symptoms, affective flattening, alogia, avolition



BI-POLAR DISORDER

- A recurrent disorder in which 90% of individuals suffer a manic episode followed by a depressive episode.
- Mania is a period of abnormally and persistently euphoric, expansive or irritable mood.
- Depression is a period of loss of interest or pleasure in all activities, decreased energy, loss of sleep, difficulty thinking, difficulty concentrating, having feelings of worthlessness



DANGEROUS TO OTHERS

G.S. 122C-3(11)b

- Within the Relevant Past;
- Inflict or Attempt to inflict Serious Bodily Harm (SBH) on another;
- Threatened to inflict SBH on another;
- Creates a substantial risk of SBH;
- Engages in extreme destruction of property;
- Homicide is prima facie evidence



DANGEROUS TO SELF

G.S. 122C-3(11)a

- Suicide, Mutilation;
- Needs supervision or assistance in conduct of daily affairs and social relations; **or**
- Needs assistance in feeding, clothing, securing, medical care, shelter, self protection, safety; **and**
- Reasonable probability of suffering serious physical debilitation without treatment



DANGEROUS TO SELF (Cont.)

- Prima Facie Inference of Inability to Care for Self:
 - Grossly irrational behavior;
 - Uncontrollable behavior;
 - Grossly inappropriate behavior;
 - Severely impaired insight.



DISPOSITION

- **Inpatient:** up to 90 days on initial commitment;
- **Outpatient:** up to 90 days on initial commitment;
- **Split Commitment:** combination inpatient and outpatient equal to 90 days (e.g. “30/60” split)
- **Outpatient/Release Pending Hearing:** Court must find criteria by “clr/cog/con evidence.”
- **Discharge**



SUBSTANCE ABUSE

Chapter 3

- Procedure to compel a “Dangerous” Substance Abuser to submit to treatment;
- Substance abuse: Pathological abuse that produces impairment in personal, social or occupational functioning;
- Not an inpatient commitment. Commitment to care of the area authority for 180 days;
- The examiner only recommends “holding” abuser in a 24 hour facility up to 45 days;
- Respondent cannot waive hearing or accept the recommendation of substance abuse commitment.



COLLATERAL CONSEQUENCES

Chapter 12

- Driving Privileges;
- Firearm Ownership and Possession;
 - Federal Law;
 - New State Legislation;
- Restrictions on Patient Rights;
 - Forced Meds/Restraint/Seclusion;
 - Visitors, Personal Property, Phone Calls; Worship;
- Expunction of Minor's Record of IVC;



12.4 Driving Privileges

Report of involuntary substance abuse commitment to DMV. The North Carolina Statutes provide that the clerk of superior court of the county of adjudication must report to the Commissioner of the Department of Motor Vehicles (DMV) “[i]f any person shall be adjudicated as incompetent or is involuntarily committed for the treatment of alcoholism or drug addiction. . . .” G.S. 20-17.1(b).

Determination by DMV. The statute requires the Commissioner to “make inquiry into the facts for the purpose of determining whether such person is competent to operate a motor vehicle.” G.S. 20-17(a). The driving privileges of the person must be revoked unless the Commissioner is “satisfied that such person is competent to operate a motor vehicle with safety to persons and property. . . .” *Id.* There are provisions for appeal of the revocation of driving privileges to the Commissioner, with the “right to a review by the review board . . . upon written request filed with the Division.” *Id.*

Medical report form. The DMV may require a medical evaluation as part of a review of a person’s driving privileges. The DMV has developed a Medical Report Form to be filled out by the physician performing the evaluation. Failure to obtain an evaluation and to return the medical report to the DMV can lead to revocation of driving privileges.

Advising the client. A client facing involuntary commitment for substance abuse treatment should be advised of the possible loss of driving privileges. After involuntary substance abuse commitment, the client may receive a notice of a review by the DMV along with a request to obtain a medical evaluation. In some instances, however, driving privileges have reportedly been revoked by the DMV upon receipt of the notice of substance abuse commitment. The client must then appeal and present evidence of the ability to drive safely. Attorney representation



12.3 Firearm Ownership and Possession

Generally. The Federal Gun Control Act contains provisions prohibiting the ownership or possession of a firearm by certain persons because they have been committed or have been adjudicated as a “mental defective.” The federal statute provides:

“It shall be unlawful for any person—

....

(4) who has been adjudicated as a mental defective or who has been committed to a mental institution;

....

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.”

18 U.S.C. 922(g).

The statute prohibits not only gun ownership but also possession by certain persons. In North Carolina a person “adjudicated as a mental defective” would appear to encompass one adjudicated to be incompetent in a special proceeding before the clerk of superior court. Determining who is included in the phrase “committed to a mental institution,” however, is not clear-cut. Involuntarily committed adults would evidently fall under the statutory definition. It is less clear whether involuntarily committed minors, voluntarily admitted incompetent adults and minors, and adults admitted pursuant to a petition for involuntary commitment but discharged prior to hearing are included. Counsel should therefore inform all of these clients of the federal law and its possible application.

The ability to own or possess a firearm can be important for a number of reasons. Military service and law enforcement are two of a number of professions that require the ability to legally own and possess a firearm. Many people also enjoy



Appendix E

Robert Stranahan, "Involuntary Commitment and the Federal Gun Control Act," *from* Second Annual Civil Commitment Conference (Jan. 23, 2004) (training program co-sponsored by Office of Indigent Defense Services and Institute of Government)



(D) ADVISING YOUR CLIENT

<u>Commitment result</u>	<u>Is right to firearm lost?</u>
Inpatient or split commitment	Yes
Substance abuse commitment	Probably
Outpatient commitment	Probably
Conversion to voluntary status before hearing	Maybe
Direct discharge before hearing	Maybe
Discharge by the court at commitment hearing	Maybe
Voluntary from start to finish	No

Your client is in the hospital on involuntary commitment papers, pending the 10-day hearing. **What can you do to minimize the damage to his firearm rights?**

- 1) If the client agrees to be in the hospital for treatment, convince the doctor to allow him to sign in voluntarily. For minors, get the parent or guardian to sign a request for voluntary admission (if the doctor will allow it).
- 2) Get the doctor to directly discharge the client before hearing. This can include continuing the case a week at a time until the client leaves.
- 3) If your client is a minor, advise him to expunge his commitment record when he



Mechanism for Enforcement: NICS

- National Instant Criminal Background Check System;
- Established as part of Brady Handgun Violence Prevention Act 1998;
- Maintained by FBI;
- Until December 1, 2008, Clerks of Court were not required to report;
- Early 2008: NICS Improvement Act;
- Clerk now reports inpatient commitments.



NEW LEGISLATION

Effective Dec. 1, 2008

- 122C-54(d)(1): Clerk shall notify NICS of R who
 - is IVC as **inpatient**;
 - is IVC as **outpatient** and **Found Dangerous**;
 - a non-statutory result: see 122C-266(a)(2);
 - Is NGRI;
 - Is Incapable of Proceeding to Trial;
- 122C-54.1: Restoration of Rights by DCJ
 - R no longer suffers from condition requiring IVC;
 - R no longer represents danger relative to firearms.



INCAPABLE TO PROCEED

Chapter 8 of Manual

- Any Crime
- Defendant unable by reason of MI or defect:
 - Understand nature of proceedings;
 - Comprehend situation in reference to proceedings;
 - Assist in her defense in a rational and reasonable manner;
- Issue Raised by defense, prosecutor or Court in criminal case



Prehearing Procedures ICP

- Ex-Parte Motion requesting funds for confidential competency examination
- Motion/Order: AOC-CR-207 or AOC-CR- 208;
 - Appendix D of Manual;
 - Local Exam for Misdemeanors;
 - Dix Exam for Felonies;
- A hearing shall be held after competency eval; 15A-1002(b).



Interplay IVC and Criminal Case

- Criminal Trial Judge issues custody order for IVC:
 - Non violent Crime: to local facility for 1st evaluation;
 - 2nd evaluation at 24 hour facility for admission.
 - R may be released pending hearing “detainer status;”
 - Violent Crime: to 24 hour facility for HB 95 status;
 - No release pending hearing;
 - Commitment Court must approve of discharge;
 - D.A. can retain jurisdiction and conduct hearings.



THERAPEUTIC LIMITATIONS

- “House Bill 95” patients are held under close custody i.e. supervision ratio 2:1;
- Close custody inhibits recreational and work therapy;
- Apparently, HB95 patients are considered more “dangerous” than other IVC patients;
- Dix has the only unit dedicated to restoration;
 - Cherry Hospital Psychology Dept. offers instruction;



REVOLVING DOOR COMMITMENT

- Until treating psychiatrist is willing to declare stable, commitment continues (liability issues);
- Often, MD won't recommend dischg. Ø Vol. D.;
- No authority for forensic evaluations prior to discharge;
- Dix Forensic has backlog of requests for evals;
- Defendant is discharged to jail, re-evaluated at Dix and re-committed within several weeks.



Defender's Responsibility

- Advise client of collateral consequences of commitment;
- Communicate with Special Counsel;
- Strategic pursuit of forensic reevaluation;
- Discourage D.A.'s dismissal with leave;
- Inform the Criminal Court about progress;
 - Request Pre-trial release if discharge imminent;
- Urge prosecutor to dismiss with prejudice;
- When client is Non-Restorable or “served time,” move the court for dismissal!



N.C.G.S. 15A-1008

- The Court may dismiss the charge with prejudice when:
 - Patient is non-restorable;
 - After five years confinement on a misdemeanor;
 - After ten years confinement on a felony;
 - When patient has been confined for a period equal to or greater than the maximum sentence for the offense charged;
- 15A-1007 requires court to consider motion to dismiss in spite of prosecutor's "VL" dismissal.



NGRI

Chapter 7

- Automatic Civil Commitment upon determination;
- Felony Injury/Death cases at Dix Forensic;
- Misdemeanor and non-injury cases at other State Facilities;
- Re-commitment hearing at 50 days; Venue: Trial Court;
- Rehearing at 180 and 365 days from commitment order;
- Forensic psychiatrist offers opinion MI and Dangerous;
- Respondent has BOP by preponderance on issues.



The End

- Procedural Defenses:
 - Review Basic Documents for errors;
 - Zollicoffer “mechanism” against unlawful detention;
 - Be critical of the petitioner and the examiner.
- Substantive Defenses:
 - “Mental Illness” requires Competent Expert Testimony;
 - Demand Clear, Cogent, Convincing and Relevant evidence of “Dangerousness”
 - Demand right to confront and cross examine witnesses;
- Counsel clients re: Collateral Consequences;
- Defense Attorney Vigilance when 122C impacts 15A.

