

# Involuntary Commitment

Mark Botts, UNC School of Government



Magistrate  
One-Day Civil Law Sessions  
Oct. 14, 2024

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## Topics

- Legally Sufficient Petition
- Communication and Collaboration
- The Seven-Day Rule



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# A Legally Sufficient Petition

- Magistrate role
- Petitioner role



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## Appellate Court said:

“Statute requires the affidavit to contain the facts on which the affiant’s opinion is based. **Mere conclusions do not suffice** to establish reasonable grounds for issuance of custody order.” In re Ingram, 74 N.C. App. 579 (1985).

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## AOC-SP-300

STATE OF NORTH CAROLINA

County: \_\_\_\_\_ In The General Court Of Justice  
District Court Division

IN THE MATTER OF: \_\_\_\_\_

Name And Address Of Respondent: \_\_\_\_\_

**AFFIDAVIT AND PETITION FOR INVOLUNTARY COMMITMENT**

Swear: Secour Security No. Of Respondent (if available) \_\_\_\_\_ Date Of Birth \_\_\_\_\_ Drivers License No. Of Respondent \_\_\_\_\_ Date \_\_\_\_\_ G.S. 122C-261, 122C-261

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:

either **all** of the ways:

**1** mentally ill and dangerous to self, others or mentally ill and in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness.

**2** in addition to being mentally ill, respondent is also "mentally retarded" pursuant to G.S. 122C-261.

**3** is 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)

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## The Magistrate

- Determines whether there are **reasonable grounds to believe** that
  - the facts alleged in the affidavit are true, and
  - based on those facts, the respondent probably meets the **criteria** for commitment
- If so, then order custody and evaluation of the respondent
- If not, no custody order issued



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## The Magistrate's Role



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## Reasonable Grounds to Believe

The *knowledge of facts* that would lead a reasonable person of ordinary intelligence and prudence to *believe* the respondent probably meets the commitment *criteria*.



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## Reasonable Grounds to Believe

- For the magistrate or clerk to have reasonable grounds to believe, you must first have *knowledge of facts* that lead to that belief.
- To have knowledge of facts that would give reasonable grounds to believe, the *affiant must assert facts* (signs and symptoms) in the affidavit.
- Mere conclusions or opinions do not suffice to give the magistrate or clerk reasonable grounds to believe, for the magistrate cannot simply adopt the belief of others. Rather, *the magistrate must come to his or her own belief* based on facts asserted in the affidavit.

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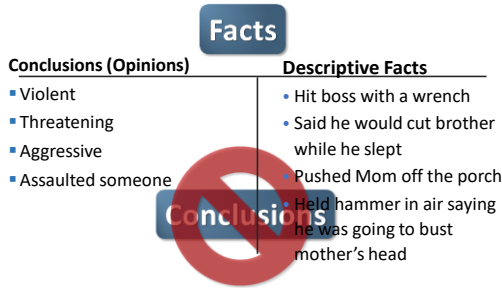
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### Information Must Be Factual




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### Dangerous to Self –Lack of Self-Care Ability

- A two-prong test that requires a finding of:
- a lack of self-care ability regarding one’s daily affairs, and
  - a probability of serious physical debilitation resulting from the more general finding of lack of self-caring ability. In re Monroe, 49 N.C.App. 23 (1980).

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### In Re C.G.—Commitment Examiner Affidavit and Petition

- Respondent “presents [as] psychotic and disorganized . . . [Respondent’s] ACTT team being unable to stabilize his psychosis in the outpatient treatment.”
- “He is so psychotic he is unable to effectively communicate his symptoms and *appears to have been neglecting his own care.*”
- “Per [Respondent’s] ACTT team he threw away his medications and has not been taking them. He *needs hospitalization for safety and stabilization.*”

*In Re C.G.*, 278 N.C. App. 416 (2021)

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# Communication and Collaboration



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## Topics

- Communication with clinician petitioner
- Communication with lay petitioner
- Knowing your county transportation plan
- Knowing your community crisis services plan
- Identifying your LME-MCO



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## Clinician Petitions

- Don't let the petition sit
- Communicate with the petitioner
  - If you issue the custody order, let them know
    - Make sure the proper entity gets the order
  - If you don't issue the custody order, let them know
    - If the facts in the petition are insufficient, let them know



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## Lay Petitions

The “magistrate shall provide the petitioner and the respondent, if present, with specific information regarding the next steps that will occur for the respondent.”

G.S. 122C-261(b)



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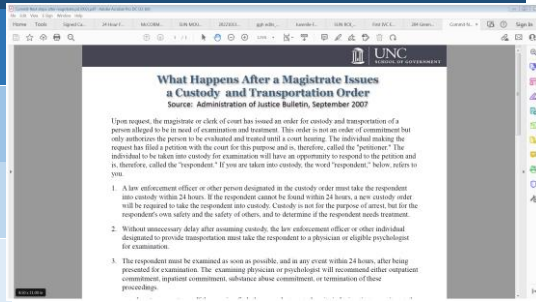
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## What Happens Next?



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## Other Information

- Other useful information:
  - Law enforcement protocol on restraint
  - Likely wait time at community hospital
- Useful contact information
  - Other resources/options for petitioner if the commitment process terminates at the first examination
  - Do you know what resources are available in your community?



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### Who do you issue the order to?

The magistrate shall issue the order to a  
 > law enforcement officer or  
 > "other designated person" (G.S. 122C-251)  
 to take the respondent into custody for  
 examination by a commitment examiner

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### Custody and transportation

- A **law-enforcement officer**—a sheriff, deputy sheriff, police officer, State highway patrolman, or an officer employed by a city or county under G.S. 122C-302 (officers employed and trained to assist individuals who are intoxicated in public), or
- A **designated person**—a person designated in the *county transportation plan* of a city or county, adopted under G.S. 122C-251(g), to provide a part or all the transportation and custody required by the involuntary commitment process.

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### County Transportation Plan

- Every county **must** adopt a plan for transportation of respondents in involuntary commitment proceedings.
- The plan **may** designate persons other than law enforcement officers to carry out all or part of the transportation and custody.
- Volunteers and public or private agency personnel other than law enforcement officers may be designated.

G.S. 122C-251(g).

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## Community Crisis Plans

- Incorporates the County Transportation Plan that identifies law enforcement agencies (and possibly other designated persons) responsible for IVC custody and transportation
  - Who transports respondents?
- Identifies where respondents shall be taken for the first IVC exam. Intended to divert some respondents from hospital ED to mental health facilities with commitment examiners.
  - Where are respondents transported?



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## Community Crisis Plans

- NC’s public mental health authorities, a.k.a., “Local Management Entities-Managed Care Organizations (LME-MCOs)” are **required** by statute to create a “community crisis plan”
- Must be developed with the participation of acute care hospitals, other first examination facilities, law enforcement agencies, and **magistrates**



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## What does an LME-MCO do?

- LME-MCOs are responsible for
  - Managing a network of publicly-funded contracted service providers within a specified **geographic area**
  - Authorizing specific services to individuals that are paid for with **available public resources** (Medicaid, State, County dollars)
- LME-MCOs do not provide services. They authorize others to provide services paid for with public funds



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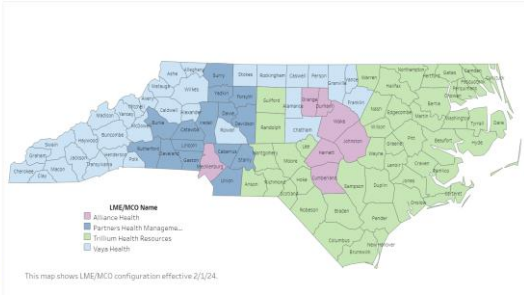
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Local Management Entity/Managed Care Organizations (LME/MCOs)  
NCDHHS Currently Has 4 LME/MCOs Operating Under the Medicaid 1915 b/c Waiver




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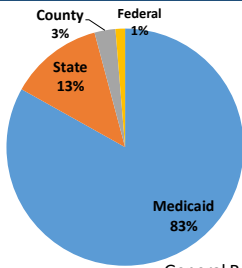
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### Who pays for LME-MCO Services?



General Ratio of LME-MCO Revenues by Source

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### Service Authorization



- Eligible individual?
- Covered service?
- Based on clinical assessment?
- Medically necessary?

LME-MCO      Provider

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# The Seven-Day Period



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## Steps Following First Exam—

If the commitment examiner recommends inpatient commitment, the law enforcement officer or other designated person must transport the respondent to a 24-hour facility for custody, examination and treatment pending hearing.

G.S. 122C-261(d)(4) and -263(d)(2).



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## Steps Following the First Exam

If a 24-hour facility is not

- Immediately available or
- Medically appropriate

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



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## Seven Day Limit

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

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## Reporting to the Clerk

“If the respondent is temporarily detained and a 24-hour facility is not available or medically appropriate seven days after the issuance of the custody order, a commitment examiner shall report this fact to the clerk of the superior court and the proceedings shall be terminated.” G.S. 122C-263(d)(2).



**In your county, how does the commitment examiner report this fact to you?**

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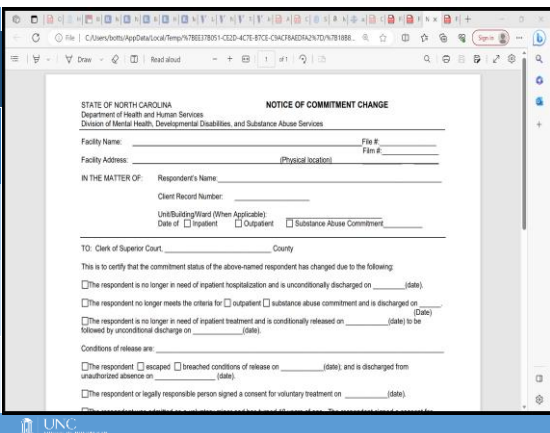
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## Legal Resources

- Mark Botts
  - 919.923.3229 mobile
  - [botts@sog.unc.edu](mailto:botts@sog.unc.edu)
  
- Online Commitment Law Training
  - <https://www.sog.unc.edu/resources/microsites/mental-health>
  - [Involuntary Commitment Law--Online Training Program](#)
    - [Part 1-Commitment Criteria](#)
    - [Part 2-Commitment Procedure](#)

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