

**§ 122C-263. Duties of law enforcement officer; first examination.**

(a) Without unnecessary delay after assuming custody, the law enforcement officer or the individual designated or required to provide transportation pursuant to G.S. 122C-251(g) shall take the respondent to a facility or other location identified by the LME/MCO in the community crisis services plan adopted pursuant to G.S. 122C-202.2 that has an available commitment examiner and is capable of performing a first examination in conjunction with a health screening at the same location, unless circumstances indicate the respondent appears to be suffering a medical emergency in which case the law enforcement officer will seek immediate medical assistance for the respondent. If a commitment examiner is not available, whether on-site, on-call, or via telehealth, at any facility or location, or if a plan has not been adopted, the person designated to provide transportation shall take the respondent to an alternative non-hospital provider or facility-based crisis center for a first examination in conjunction with a health screening at the same location. If no non-hospital provider or facility-based crisis center for a first examination in conjunction with a health screening at the same location for health screening and first examination exists, the person designated to provide transportation shall take the respondent to a private hospital or clinic, a general hospital, an acute care hospital, or a State facility for individuals with mental illnesses. If a commitment examiner 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, in a private hospital or a clinic, in a general hospital, or in a State facility for individuals with mental illnesses, but not in a jail or other penal facility. For the purposes of this section, "non-hospital provider" means an outpatient provider that provides either behavioral health or medical services.

(a1) A facility or other location to which a respondent is transported under subsection (a) of this section shall provide a health screening of the respondent. The health screening shall be conducted by a commitment examiner or other individual who is determined by the area facility, contracted facility, or other location to be qualified to perform the health screening. The Department will work with commitment examiner professionals to develop a screening tool for this purpose. The respondent may either be in the physical face-to-face presence of the person conducting the screen or may be examined utilizing telehealth equipment and procedures. Documentation of the health screening required under this subsection that is completed prior to transporting the patient to any general hospital, acute care hospital, or designated facility shall accompany the patient or otherwise be made available at the time of transportation to the receiving facility.

(b) The examination set forth in subsection (a) of this section is not required under any of the following circumstances:

- (1) The affiant who obtained the custody order is a commitment examiner who recommends inpatient commitment.
- (2) The custody order states that the respondent was charged with a violent crime, including a crime involving assault with a deadly weapon, and the respondent was found incapable of proceeding.
- (3) Repealed by Session Laws 1987, c. 596, s. 3.

In any of these cases, the law enforcement officer or person designated under G.S. 122C-251(g) shall take the respondent directly to a 24-hour facility described in G.S. 122C-252.

(c) The commitment examiner described in subsection (a) of this section shall examine the respondent as soon as possible, and in any event within 24 hours after the respondent is presented for examination. When the examination set forth in subsection (a) of this section is performed by a commitment examiner, the respondent may either be in the physical face-to-face presence of the commitment examiner or may be examined utilizing telehealth equipment and procedures. A commitment examiner who examines a respondent by means of telehealth must

be satisfied to a reasonable medical certainty that the determinations made in accordance with subsection (d) of this section would not be different if the examination had been done in the physical presence of the commitment examiner. A commitment examiner who is not so satisfied must note that the examination was not satisfactorily accomplished, and the respondent must be taken for a face-to-face examination in the physical presence of a person authorized to perform examinations under this section. As used in this section, "telehealth" means the use of two-way, real-time interactive audio and video where the respondent and commitment examiner can hear and see each other. A recipient is referred by one provider to receive the services of another provider via telehealth.

The examination shall include an assessment of at least all of the following with respect to the respondent:

- (1) Current and previous mental illness and intellectual disability including, if available, previous treatment history.
- (2) Dangerousness to self, as defined in G.S. 122C-3(11)a. or others, as defined in G.S. 122C-3(11)b.
- (3) Ability to survive safely without inpatient commitment, including the availability of supervision from family, friends, or others.
- (4) Capacity to make an informed decision concerning treatment.

(d) After the conclusion of the examination the commitment examiner shall make the following determinations:

- (1) If the commitment examiner finds all of the following, the commitment examiner shall so show on the examination report and shall recommend outpatient commitment:
  - a. The respondent has a mental illness.
  - b. The respondent is capable of surviving safely in the community with available supervision from family, friends, or others.
  - c. Based on the respondent's psychiatric history, the respondent is in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness as defined by G.S. 122C-3(11).
  - d. The respondent's current mental status or the nature of the respondent's illness limits or negates the respondent's ability to make an informed decision to seek voluntarily or comply with recommended treatment.

In addition, the commitment examiner shall show the name, address, and telephone number of the proposed outpatient treatment physician or center in accordance with subsection (f) of this section. 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.

- (2) If the commitment examiner finds that the respondent has a mental illness and is dangerous to self, as defined in G.S. 122C-3(11)a., or others, as defined in G.S. 122C-3(11)b., the commitment examiner shall recommend inpatient commitment, and shall so show on the examination report. If, in addition to mental illness and dangerousness, the commitment examiner also finds that the respondent is known or reasonably believed to have an intellectual disability, this finding shall be shown on the report. Upon notification, the law enforcement officer or other designated person shall take the respondent to a 24-hour facility described in G.S. 122C-252 pending a district court hearing. To the extent feasible, in providing the transportation of the respondent, the

law enforcement officer shall act within six hours of notification. The other designated person shall take the respondent to a 24-hour facility described in G.S. 122C-252 pending a district court hearing within six hours of notification. If there is no area 24-hour facility and if the respondent is indigent and unable to pay for care at a private 24-hour facility, the law enforcement officer or other designated person shall take the respondent to a State facility for individuals with mental illnesses designated by the Commission in accordance with G.S. 143B-147(a)(1)a. for custody, observation, and treatment and immediately notify the clerk of superior court of this action. If a 24-hour facility is not immediately available or appropriate to the respondent's medical condition, the respondent may be temporarily detained under appropriate supervision at the site of the first examination. Upon the commitment examiner's determination that a 24-hour facility is available and medically appropriate, the law enforcement officer or other designated person shall transport the respondent after receiving a request for transportation by the facility of the commitment examiner. To the extent feasible, in providing the transportation of the respondent, the law enforcement officer shall act within six hours of notification. The other designated person shall transport the respondent without unnecessary delay and within six hours after receiving a request for transportation by the facility of the commitment examiner. At any time during the respondent's temporary detention under appropriate supervision, if a commitment examiner determines that the respondent is no longer in need of inpatient commitment, the proceedings shall be terminated and the respondent transported and released in accordance with subdivision (3) of this subsection. However, if the commitment examiner determines that the respondent meets the criteria for outpatient commitment, as defined in subdivision (1) of this subsection, the commitment examiner may recommend outpatient commitment, and the respondent shall be transported and released in accordance with subdivision (1) of this subsection. Any decision to terminate the proceedings or to recommend outpatient commitment after an initial recommendation of inpatient commitment shall be documented and reported to the clerk of superior court in accordance with subsection (e) of this section. 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 superior court and the proceedings shall be terminated. Termination of proceedings pursuant to this subdivision shall not prohibit or prevent the initiation of new involuntary commitment proceedings when appropriate. A commitment examiner may initiate a new involuntary commitment proceeding prior to the expiration of this seven-day period, as long as the respondent continues to meet applicable criteria. Affidavits filed in support of proceedings terminated pursuant to this subdivision shall not be submitted in support of any subsequent petitions for involuntary commitment. If the affiant initiating new commitment proceedings is a commitment examiner, the affiant shall conduct a new examination and shall not rely upon examinations conducted as part of proceedings terminated pursuant to this subdivision.

In the event an individual known or reasonably believed to have an intellectual disability is transported to a State facility for individuals with mental illnesses, in no event shall that individual be admitted to that facility unless the individual is in one or more of the following categories:

- a. Persons described in G.S. 122C-266(b).
- b. Persons admitted pursuant to G.S. 15A-1321.
- c. Respondents who are so extremely dangerous as to pose a serious threat to the community and to other patients committed to non-State hospital psychiatric inpatient units, as determined by the Director of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services or the Director's designee.
- d. Respondents who are so gravely disabled by both multiple disorders and medical fragility or multiple disorders and deafness that alternative care is inappropriate, as determined by the Director of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services or the Director's designee.

Individuals transported to a State facility for individuals with mental illnesses who are not admitted by the facility may be transported by law enforcement officers or designated staff of the State facility in State-owned vehicles to an appropriate 24-hour facility that provides psychiatric inpatient care.

No later than 24 hours after the transfer, the responsible professional at the original facility shall notify the petitioner, the clerk of court, and, if consent is granted by the respondent, the next of kin, that the transfer has been completed.

- (3) If the commitment examiner finds that neither condition described in subdivisions (1) or (2) of this subsection exists, the proceedings shall be terminated. 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.

(e) The findings of the commitment examiner and the facts on which they are based shall be in writing in all cases. The commitment examiner shall send a copy of the findings to the clerk of superior court by the most reliable and expeditious means. If it cannot be reasonably anticipated that the clerk will receive the copy within 48 hours of the time that it was signed, the physician or eligible psychologist shall also communicate his findings to the clerk by telephone.

(f) When outpatient commitment is recommended, the commitment examiner, if different from the proposed outpatient treatment physician or center, shall contact the LME/MCO that serves the county where the respondent resides or the LME/MCO that coordinated services for the respondent to inform the LME/MCO that the respondent is being recommended for outpatient commitment. The commitment examiner shall give the respondent a written notice listing the name, address, and telephone number of the proposed outpatient treatment physician or center.

(g) The commitment examiner, at the completion of the examination, shall provide the respondent with specific information regarding the next steps that will occur. (1973, c. 726, s. 1; c. 1408, s. 1; 1977, c. 400, s. 4; c. 679, s. 8; c. 739, s. 1; 1979, c. 358, s. 27; c. 915, s. 4; 1983, c. 380, ss. 4, 10; c. 638, ss. 6, 7, 25.1; c. 864, s. 4; 1985, c. 589, s. 2; c. 695, ss. 2, 5, 6; 1985 (Reg. Sess., 1986), c. 863, s. 18; 1987, c. 596, s. 3; 1989, c. 225, s. 2; c. 770, s. 74; 1989 (Reg. Sess., 1990), c. 823, ss. 3, 4; 1991, c. 37, s. 8; c. 636, s. 2(1); c. 761, s. 49; 1995 (Reg. Sess., 1996), c. 739, s. 8(a)-(d); 2009-315, s. 2; 2009-340, s. 2; 2018-33, s. 24; 2018-76, s. 3.2(a); 2019-76, s. 9; 2019-177, s. 7(a); 2021-77, s. 6(a).)