§ 122C-261. Affidavit and petition before clerk or magistrate when immediate hospitalization is not necessary; custody order.

(a) Anyone who has knowledge of an individual who has a mental illness and is either (i) dangerous to self, as defined in G.S. 122C-3(11)a., or dangerous to others, as defined in G.S. 122C-3(11)b., or (ii) in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness, may appear before a clerk or assistant or deputy clerk of superior court or a magistrate and execute an affidavit to this effect, and petition the clerk or magistrate for issuance of an order to take the respondent into custody for examination by a commitment examiner. The affidavit shall include the facts on which the affiant's opinion is based. If the affiant has knowledge or reasonably believes that the respondent, in addition to having a mental illness, also has an intellectual disability, this fact shall be stated in the affidavit. Jurisdiction under this subsection is in the clerk or magistrate in the county where the respondent resides or is found.

(b) If the clerk or magistrate finds reasonable grounds to believe that the facts alleged in the affidavit are true and that the respondent probably has a mental illness and is either (i) dangerous to self, as defined in G.S. 122C-3(11)a., or dangerous to others, as defined in G.S. 122C-3(11)b., or (ii) in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness, the clerk or magistrate shall issue an order to a law enforcement officer or any other designated person under G.S. 122C-251 to take the respondent into custody for examination by a commitment examiner. If the clerk or magistrate finds that, in addition to probably having a mental illness, the respondent also probably has an intellectual disability, the clerk or magistrate shall contact the area authority before issuing a custody order and the area authority shall designate the facility to which the respondent is to be taken for examination by a commitment examiner. The clerk or magistrate shall provide the petitioner and the respondent, if present, with specific information regarding the next steps that will occur for the respondent.

(c) If the clerk or magistrate issues a custody order, the clerk or magistrate shall also make inquiry in any reliable way as to whether the respondent is indigent within the meaning of G.S. 7A-450. A magistrate shall report the result of this inquiry to the clerk.

(d) If the affiant is a commitment examiner, who is filing a petition and affidavit for an involuntary commitment in a county that has not implemented an electronic filing system approved by the Director of the Administrative Office of the Courts, all of the following apply:

(1) If the affiant has examined the respondent, the affiant may execute the affidavit before any official authorized to administer oaths. This affiant is not required to appear before the clerk or magistrate for this purpose. This affiant shall file the affidavit with the clerk or magistrate by delivering to the clerk or magistrate the original affidavit, by transmitting a copy in paper form that is printed through the facsimile transmission of the affidavit, or by delivering the affidavit through electronic transmission. If the affidavit is filed through electronic or facsimile transmission, the affiant shall mail the original affidavit no later than five days after the facsimile transmission of the affidavit to the clerk or magistrate to be filed by the clerk or magistrate with the facsimile copy of the affidavit.

(2) This affiant's examination shall comply with the requirements of the initial examination as provided in G.S. 122C-263(c). The affiant shall document in writing and file the examination findings with the affidavit delivered to the clerk or magistrate in accordance with subdivision (1) of subsection (d) of this section.

(3) If the commitment examiner recommends outpatient commitment according to the criteria for outpatient commitment set forth in G.S. 122C-263(d)(1) and the clerk or magistrate finds probable cause to believe that the respondent meets the criteria for outpatient commitment, the clerk or magistrate shall issue an order that a hearing before a district court judge be held to determine whether the respondent will be involuntarily committed. The commitment examiner 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 has been scheduled for an appointment with an outpatient treatment physician or center. The commitment examiner shall provide the respondent with written notice of any scheduled appointment and the name, address, and telephone number of the proposed outpatient treatment physician or center.

(4) If the commitment examiner recommends inpatient commitment based on the criteria for inpatient commitment set forth in G.S. 122C-263(d)(2) and the clerk or magistrate finds probable cause to believe that the respondent meets the criteria for inpatient commitment, the clerk or magistrate shall issue an order to a law enforcement officer to take the respondent into custody for transportation to a 24-hour facility described in G.S. 122C-252, provided that 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 and, upon further examination, released in accordance with G.S. 122C-263(d)(2).

(5) If the affiant is a physician or eligible psychologist at a 24-hour facility described in G.S. 122C-252 who recommends inpatient commitment; the respondent is physically present on the premises of the same 24-hour facility; and the clerk or magistrate finds probable cause to believe that the respondent meets the criteria for inpatient commitment, then the clerk or magistrate shall issue an order by facsimile transmission or by electronic transmission to the physician or eligible psychologist at the 24-hour facility, or a designee, to take the respondent into custody at the 24-hour facility and proceed according to G.S. 122C-266. Upon receipt of the custody order, the physician or eligible psychologist at the 24-hour facility, or a designee, shall immediately (i) notify the respondent that the respondent is not under arrest and has not committed a crime but is being taken into custody to receive treatment and for the respondent's own safety and the safety of others, (ii) take the respondent into custody, and (iii) complete and sign the appropriate portion of the custody order and return the order to the clerk or magistrate either by facsimile transmission or by scanning it and sending it by electronic transmission. The physician or eligible psychologist, or a designee, shall mail the original custody order no later than five days after returning it by means of facsimile or electronic transmission to the clerk or magistrate. The clerk or magistrate shall file the original custody order with the copy of the custody order that was electronically returned.

Notwithstanding the provisions of this subdivision, a clerk or magistrate shall not issue a custody order to a physician or eligible psychologist at a 24-hour facility, or a designee, if the physician or eligible psychologist, or a designee, has not completed training in proper service and return of service. As used in this subdivision, the term "designee" includes the 24-hour facility's on-site police security personnel.

The Department of Health and Human Services shall cooperate and collaborate with the Administrative Office of the Courts and the UNC School of Government to develop protocols to implement this section, including a procedure for notifying clerks and magistrates of the names of the physicians, psychologists, and designees who have completed the training. The Secretary of the Department shall oversee implementation of these protocols.

(6) If the clerk or magistrate finds probable cause to believe that the respondent, in addition to having a mental illness, also has an intellectual disability, the clerk or magistrate shall contact the area authority before issuing the order and the area authority shall designate the facility to which the respondent is to be transported.

(7) If a commitment examiner executes an affidavit for inpatient commitment of a respondent, a physician who is not the commitment examiner who performed the examination under this section shall be required to perform the examination required by G.S. 122C-266.

(8) No commitment examiner, area facility, acute care hospital, general hospital, or other site of first examination, or its officials, staff, employees, or other individuals responsible for the custody, examination, detention, management, supervision, treatment, or release of an individual examined for commitment, who is not grossly negligent, shall be held liable in any civil or criminal action for taking measures to temporarily detain an individual for the period of time necessary to complete a commitment examination, submit an affidavit to the magistrate or clerk of court, and await the issuance of a custody order as authorized by this section.

(d1) If the affiant is a commitment examiner filing a petition and affidavit for an involuntary commitment in a county that has implemented an electronic filing system approved by the Director of the Administrative Office of the Courts, the same provisions of subsection (d) of this section apply except that (i) the commitment examiner or their designee shall file the affidavit and petition, as well as any other supporting documentation required by law, through the electronic filing system, and (ii) the original affidavit and original custody order are not required to be mailed to the clerk or magistrate. In such counties, commitment examiners shall also file any subsequent documentation and notifications prescribed by statute to the clerk of superior court through the electronic filing system.

(e) Except as provided in subdivision (5) of subsection (d) of this section, upon receipt of the custody order of the clerk or magistrate or a custody order issued by the court pursuant to G.S. 15A-1003, a law enforcement officer, person designated under G.S. 122C-251(g), or other person identified in the order shall take the respondent into custody within 24 hours after the order is signed, and proceed according to G.S. 122C-263. The custody order is valid throughout the State.

Notwithstanding the provisions of this section, in no event shall an individual known or reasonably believed to have an intellectual disability be admitted to a State psychiatric hospital, except the following:

(1) Persons described in G.S. 122C-266(b).

(2) Persons admitted pursuant to G.S. 15A-1321.

(3) 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 Use Services or the Director's designee.

(4) 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 Use 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 appropriate 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.

(f) Repealed by Session Laws 2018-33, s. 46, effective October 1, 2019. (1973, c. 726, s. 1; c. 1408, s. 1; 1977, c. 400, s. 3; 1979, c. 164, s. 2; c. 915, ss. 3, 18; 1983, c. 383, s. 5; c. 638, ss. 3-5; c. 864, s. 4; 1985, c. 589, s. 2; c. 695, ss. 2, 4; 1985 (Reg. Sess., 1986), c. 863, s. 17; 1989 (Reg. Sess., 1990), c. 823, ss. 1, 2; c. 1024, s. 27.1; 1991, c. 37, s. 7; 1995 (Reg. Sess., 1996), c. 739, s. 6; 1997-456, s. 47; 2004-23, s. 1(a); 2005-135, s. 1; 2009-315, s. 1; 2009-340, s. 1; 2013-308, ss. 1, 2; 2018-33, s. 22; 2019-76, s. 7; 2019-240, s. 26(g); 2023-65, s. 5.2(b); 2023-103, s. 13(a); 2024-33, s. 16.)