

Involuntary Commitment and Voluntary Admission of Minors

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Two Distinct Judicial Procedures

Involuntary Commitment

- Initiated by anyone with knowledge

Voluntary admission of Minors

- Initiated by the minor's legally responsible person

Voluntary Admission

Voluntary Admissions to Inpatient Psychiatric and Substance Abuse Facilities—G.S. 122C, Art. V

- Adults presumed competent and capable (Part 2)
 - Admission pursuant to patient consent
 - No judicial concurrence required
- Adults deemed incapable (Part 2A)
 - Admission pursuant to patient’s advance instruction or health care agent’s consent
 - No judicial concurrence required
- Adults adjudicated incompetent (Part 4)
 - Admission with consent of the “legally responsible person”
 - **Judicial concurrence required**
- Minors (Part 3)
 - Admission with consent of the “legally responsible person”
 - **Judicial concurrence required**

Legally Responsible Person for a Minor

- Parent
 - Guardian
 - Person standing in loco parentis, or
 - Legal custodian other than a parent who has been granted specific authority
 - by law
 - or in a custody order
- to consent to medical care, including psychiatric treatment

G.S. 122C-3(20)

Legally Responsible Person for Incompetent Adult

When applied to an adult who has been adjudicated incompetent, a guardian.

- “Guardian” means a person appointed as a guardian of the person or a general guardian by the court under Chapter 35A

G.S. 122C-3 (15),(20)

Legally Responsible Person— Minors and Incompetent Adults

Whenever in GS 122C the phrase “client or his legally responsible person” is used, and the client is

- a minor, or
- an adult adjudicated incompetent

the duty or right involved shall be exercised not by the client, but by the legally responsible person, except as otherwise provided by law. GS 122C-3, -4.

Informed Consent to Treatment

- Treatment requires patient consent
 - The client or the client's legally responsible person has the right to consent to or refuse any treatment offered by an MH/DD/SA facility. GS 122C-57(d).
- Consent must be informed
 - The client or the client's legally responsible person shall be informed of the potential risks and alleged benefits of the treatment choices. GS 122C-57(a).

Access to Treatment Information

Upon request, the legally responsible person shall have access to the client's confidential information relating to services for mental illness, intellectual or developmental disabilities, and substance use disorder.

G.S. 122C-3 (9),(15),(20) and -53(d)

Voluntary Admissions—General Requirements—G.S. 122C-211

- Written application—“A written application for evaluation or admission, signed by the individual seeking admission, or the individual’s legally responsible person, is required”
- Evaluation—“An evaluation shall determine whether the individual is need of care, treatment, habilitation, or rehabilitation for mental illness or substance abuse or further evaluation by the facility”

Voluntary Admission of Minors—Inpatient

- Application must be in writing and signed by LRP
- Facility must notify clerk of court of need for hearing and submit:
 - Names and addresses of the legally responsible person
 - A copy of the legally responsible person's written application for admission of the minor
 - A copy of facility's written evaluation of the minor

Clerks Duties

- Upon receipt of notice that a minor has been admitted to a 24-hour facility wherein his freedom of movement will be restricted, the clerk shall calendar a hearing to be held within 15 days of admission for the purpose of review of the minor's admission.
- Notice of the time and place of the hearing shall be given as provided in [G.S. 1A-1, Rule 4\(j\)](#) to the attorney in lieu of the minor, as soon as possible but not later than 72 hours before the scheduled hearing.
- Notice of the hearing shall be sent to the legally responsible person and the responsible professional as soon as possible but not later than 72 hours before the hearing by first-class mail postage prepaid to the individual's last known address.

G.S. 122C-224.1(b)

Disposition—GS 122C-224.3

- If the court finds by clear, cogent, and convincing evidence that the minor is (1) mentally ill or a substance abuser and (2) in need of further treatment at the 24-hour facility to which he has been admitted, the court shall concur with the voluntary admission and set the length of the authorized admission of the minor for a period not to exceed 90 days; or
- If there exist reasonable grounds to believe that the criteria for admission have been met but that additional diagnosis and evaluation is needed before the court can concur in the admission, the court may make a one-time authorization of up to an additional 15 days of stay, during which time further diagnosis and evaluation shall be conducted; or
- If the conditions for concurrence or continued diagnosis and evaluation have not been met, the judge shall order that the minor be released.

Discharge—G.S. 122C-224.7

- The responsible professional shall unconditionally discharge a minor from treatment at any time that it is determined that the minor is no longer mentally ill or a substance abuser, or no longer in need of treatment at the facility.
- The legally responsible person may file a written request for discharge from the facility at any time.
 - The facility may hold the minor for 72 hours after receipt of the request for discharge to commence IVC proceedings if the responsible professional believes that the minor is mentally ill and dangerous to himself or others.

Discharge Plan—G.S. 122C-61(2)

- The right to . . . during treatment or habilitation but not later than the time of discharge, an individualized written discharge plan containing recommendations for further services designed to enable the client to live as normally as possible.
- A discharge plan may not be required when it is not feasible because of an unanticipated discontinuation of a client's treatment.
- With the consent of the client or his legally responsible person, the professionals responsible for the plans shall contact appropriate agencies at the client's destination or in his home community before formulating the recommendations.
- A copy of the plan shall be furnished to the client or to his legally responsible person and, with the consent of the client, to the client's next of kin.

Some Takeaways

- Treatment requires the participation of the legally responsible person because treatment requires consent.
- Treatment requires consultation with the legally responsible person because consent requires that the LRP be informed.
- The legally responsible person should be at the hearing because the LRP is likely to possess information relating to the criteria for admission
- The LRP does not control whether the court or facility determine that the minor meets the criteria for continued admission
- The LRP should be involved in discharge planning because the LRP has relevant information, subsequent services require the informed consent of the LRP, and LRP has responsibility to arrange services.

DOJ Investigation of Rhode Island

- [Letter of Findings](#) to the Rhode Island Department of Children, Youth and Families (DCYF) regarding children with mental health and/or developmental disabilities
- Investigation found that, rather than complying with its legal obligation to provide services in the most integrated setting appropriate to the needs of these children, the state instead left them hospitalized for far longer than is necessary.
- DCYF failed to ensure that children with disabilities were able to access the intensive in-home and community-based services they need and failed to facilitate prompt discharges from hospital to family homes, resulting in extended and unnecessary hospitalization in violation of Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973.

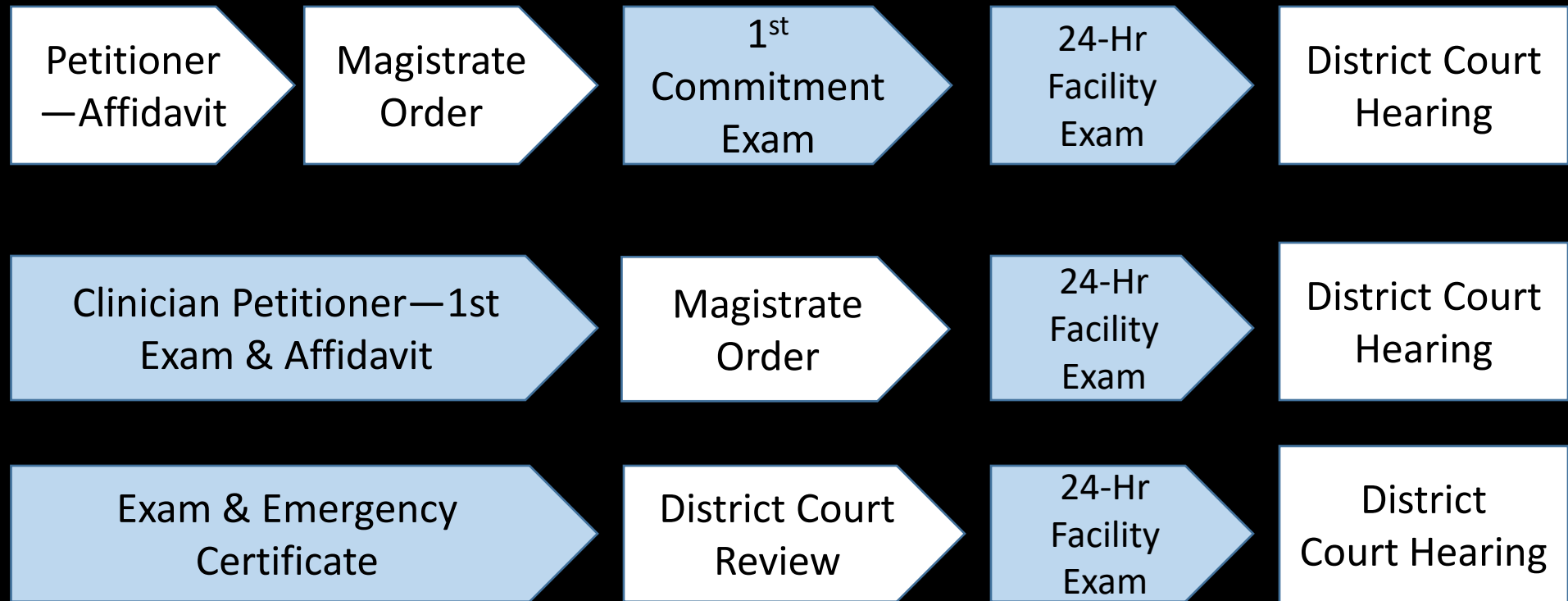
Involuntary Commitment

Involuntary Commitment

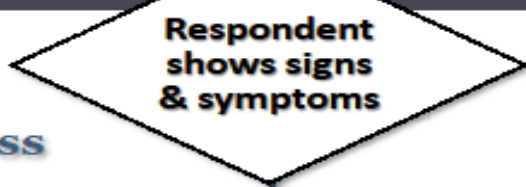
- Criteria—The grounds for court-ordered treatment.
- Procedure—The process for obtaining court-ordered treatment.



Overview of Commitment Procedure—3 Procedural Pathways



North Carolina Involuntary Commitment Process



Layperson petition
Layperson completes petition in front of magistrate

Magistrate reviews petition & issues custody order

Officer transports respondent

Hospital ER or LME facility (1st exam)

Officer transports respondent

Clinician petition
Clinician completes petition & exam form (1st exam), then faxes to magistrate

Magistrate reviews petition & issues custody order

Officer transports respondent

24-hour facility (2nd exam)

Emergency petition*
Clinician completes exam form & emergency certificate (1st exam), submits to clerk of court for 24-hr. facility & local officer

Officer transports respondent pursuant to emergency certificate

District court judge reviews examination form

Hearing: Court orders release, outpatient, inpatient, or substance abuse commitment

*Use when respondent requires immediate hospitalization; procedure by-passes magistrate.

The Petitioner

The individual who asks the magistrate—through the submission of a sworn affidavit—to commence the commitment process

- Anyone with knowledge may petition
- Petitioner must appear personally
- Jurisdiction is in the county where respondent resides or is found



The Magistrate

- Determines whether there are reasonable grounds to believe that
 - the facts alleged in the affidavit are true, and
 - the respondent probably meets the criteria for commitment
- Orders custody and evaluation of the respondent



The Criteria for Commitment

1. **Inpatient commitment**—mentally ill + dangerous to self or others
2. **Substance abuse commitment**—substance abuser + dangerous to self or others
3. **Outpatient commitment**—mentally ill and based on their psychiatric history in need of treatment to prevent disability or deterioration that would predictably result in dangerousness

1. mental illness
2. substance abuse
3. dangerous to self
4. dangerous to others



Criteria for Involuntary Commitment in North Carolina

Mental Illness (Adults)

an illness that so lessens the capacity of the individual to use self-control, judgment, and discretion in the conduct of his affairs and social relations as to make it necessary or advisable for him to be under treatment, care, supervision, guidance, or control.

Mental Illness (Minors)

a mental condition, other than mental retardation alone, that so impairs the youth's capacity to exercise age-adequate self-control or judgment in the conduct of his activities and social relationships that he is in need of treatment.

Substance abuse

the pathological use or abuse of alcohol or other drugs in a way or to a degree that produces an impairment in personal, social, or occupational functioning. Substance abuse may include a pattern of tolerance and withdrawal.

Dangerous to self

Within the relevant past, the individual has:

1. acted in such a way as to show that
 - a. he would be unable, without care, supervision, and the continued assistance of others not otherwise available, to exercise self-control, judgment, and discretion in the conduct of his daily responsibilities and social relations, or to satisfy his need for nourishment, personal or medical care, shelter, or self-protection and safety; and
 - b. there is a reasonable probability of his suffering serious physical debilitation within the near future unless adequate treatment is given. Behavior that is grossly irrational, actions that the individual is unable to control, behavior that is grossly inappropriate to the situation, or other evidence of severely impaired insight and judgment creates an inference that the individual is unable to care for himself; or
2. attempted suicide or threatened suicide and there is a reasonable probability of suicide unless adequate treatment is given; or
3. mutilated himself or attempted to mutilate himself and there is a reasonable probability of serious self-mutilation unless adequate treatment is given.

Previous episodes of dangerousness to self, when applicable, may be considered when determining the reasonable probability of serious physical debilitation, suicide, or serious self-mutilation.

Dangerous to others

Within the relevant past the individual has:

1. inflicted, attempted to inflict, or threatened to inflict serious bodily harm on another and there is a reasonable probability that this conduct will be repeated, or
2. acted in a way that created a substantial risk of serious bodily harm to another and there is a reasonable probability that this conduct will be repeated, or
3. engaged in extreme destruction of property and there is a reasonable probability that this conduct will be repeated.

Previous episodes of dangerousness to others, when applicable, may be considered when determining the reasonable probability of future dangerous conduct. Clear, cogent, and convincing evidence that an individual has committed a homicide in the relevant past is evidence of dangerousness to others.

Outpatient Commitment

1. Mentally ill
2. Based on psychiatric history, needs treatment to prevent further disability or deterioration that would predictably result in dangerousness
3. Current mental status or nature of illness limits or negates the patient's ability to make an informed decision to seek treatment voluntarily or to comply with recommended treatment
4. Capable of surviving safely in the community with available supervision from family, friends, or others

Custody-GS 122C-261

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

Law Enforcement Officer

Upon receipt of the custody order, the law enforcement officer must take the respondent into custody within 24 hours after the order is signed



Without unnecessary delay, the officer must take the respondent to a physician or psychologist for examination.



Commitment Examiner Role— Findings and Recommendations

Findings

Result

Commitment criteria not found

→ Release

Outpatient commitment

→ Release
pending
hearing

Inpatient commitment →

Inpatient facility

Substance abuse commitment →

Release or
inpatient facility



Clinician Petition Procedure—G.S. 122C-261(d)

If the affiant

- Is a commitment examiner who
- Examines the respondent (physical face to face presence or via telemedicine equipment and procedures), and
- Signs the “Affidavit and Petition” before an official authorized to administer oaths (notary),



Then petitioner may file the examination and affidavit forms by delivering copies through facsimile transmission

Custody Order—302B

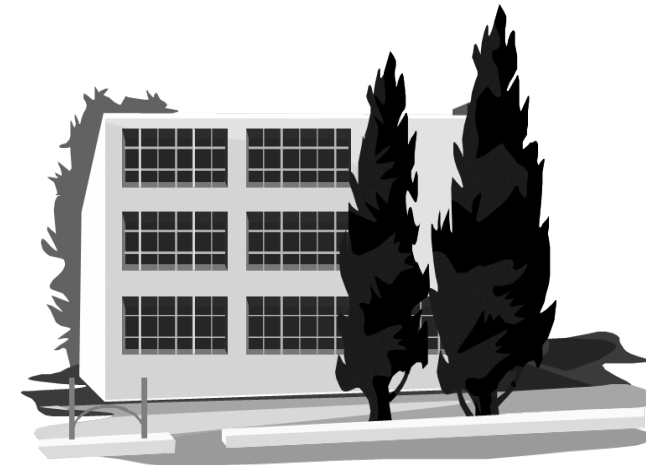
The magistrate shall issue an order to

- a law enforcement officer or
- any other person authorized under G.S. 122C-251

To take the respondent into custody and transport to a 24-hour facility for custody, examination, and treatment pending hearing

24-Hour Inpatient Facility for IVC

- Provides treatment for mental illness or substance abuse in a structured living environment for a period of 24 consecutive hours or more.
- Performs the **second commitment examination**.
- Where respondent is held pending hearing.
- Must be designated by NC DHHS for the custody and treatment of involuntary clients



Second Examination at 24-Hour Facility- G.S. 122C-266

1. Examination

- Within 24 hours of presentation
- By a physician (or qualified professional for SA commit)

2. Recommendation

- Inpatient → hold and treat pending hearing
- Outpatient → release
- Substance abuse → hold and treat or designate other treatment pending hearing
- Criteria not met → release

Release following 2nd Exam

The law enforcement officer or other person designated to provide transportation shall return the respondent to the respondent's residence in the originating county or, if requested by the respondent, to another location in the originating county.

Duties of Clerk of Superior Court

- Upon receipt of an examiner's findings that R meets criteria for outpatient commitment, calendar hearing and notify respondent, proposed outpatient provider, and petitioner.
 - Upon receipt of examiner's findings that R meets criteria for inpatient commitment, assign counsel, calendar a hearing, and notify respondent, his or her counsel, and petitioner.
- ❖ There is no provision for notifying the respondent's LRP

The District Court Judge—G.S. 122C-268

Orders commitment of the respondent if there is clear, cogent, and convincing evidence that the respondent meets the criteria for commitment



Hearing

- Within 10 days of the day the respondent is taken into custody
- The respondent shall be represented by counsel
- With the consent of the court, counsel may in writing waive the presence of the respondent.

Disposition

- If the respondent meets the outpatient commitment criteria, the court may order outpatient commitment for a period not in excess of 90 days
- If the respondent meets the criteria for inpatient commitment, the court may order commitment for a period not in excess of 90 days.
- If the court does not find that the respondent meets either of the commitment criteria for inpatient or outpatient commitment, the respondent shall be discharged.

Dangerous to Self

Within the relevant past, the individual has:

- Acted in a way to show unable to care for self + reasonable probability of serious physical debilitation in the near future unless adequate treatment is given—or
- Attempted or threatened suicide + reasonable probability of suicide unless adequate treatment is given—or
- Attempted or engaged in self-mutilation + reasonable probability of serious self-mutilation unless adequate treatment is given

Dangerous to Others

Within the relevant past, the individual has:

1. Inflicted, attempted, or threatened serious bodily harm + reasonable probability of conduct repeating
or
2. Created a substantial risk of serious bodily harm + reasonable probability of conduct repeating
or
3. Engaged in extreme destruction of property + reasonable probability of conduct repeating

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).

Trial Court—In Re K.H.

- Psychiatrist testimony:
 - 63 yr. old female with history of schizophrenia
 - Originally brought to hospital homeless, eating raw meat, and carrying her feces around in a bag
 - Presented with persecutory delusions
 - Was malnourished
- Trial findings of fact: Respondent
 - Suffers from schizophrenia, delusions, malnourishment
 - Unable to care for herself in the community
 - Interrupted doctor's testimony
 - Testimony was rambling and incoherent

Appellate Court—In Re K.H.

- While the record evidence was sufficient to support these findings . . . These findings are only sufficient to support the trial court's ultimate findings that respondent had a mental illness and was unable to care for herself.
- None of these findings have anything to do with the probability of respondent suffering serious physical debilitation in the near future.

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a mental condition, other than mental retardation alone, that so impairs the youth's capacity to exercise age-adequate self-control or judgment in the conduct of his activities and social relationships that he is in need of treatment.

Substance abuse

the pathological use or abuse of alcohol or other drugs in a way or to a degree that produces an impairment in personal, social, or occupational functioning. Substance abuse may include a pattern of tolerance and withdrawal.

Dangerous to self

Within the relevant past, the individual has:

1. acted in such a way as to show that
 - a. he would be unable, without care, supervision, and the continued assistance of others not otherwise available, to exercise self-control, judgment, and discretion in the conduct of his daily responsibilities and social relations, or to satisfy his need for nourishment, personal or medical care, shelter, or self-protection and safety; and
 - b. there is a reasonable probability of his suffering serious physical debilitation within the near future unless adequate treatment is given. Behavior that is grossly irrational, actions that the individual is unable to control, behavior that is grossly inappropriate to the situation, or other evidence of severely impaired insight and judgment creates an inference that the individual is unable to care for himself; or
2. attempted suicide or threatened suicide and there is a reasonable probability of suicide unless adequate treatment is given; or
3. mutilated himself or attempted to mutilate himself and there is a reasonable probability of serious self-mutilation unless adequate treatment is given.

Previous episodes of dangerousness to self, when applicable, may be considered when determining the reasonable probability of serious physical debilitation, suicide, or serious self-mutilation.

Dangerous to others

Within the relevant past the individual has:

1. inflicted, attempted to inflict, or threatened to inflict serious bodily harm on another and there is a reasonable probability that this conduct will be repeated, or
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3. engaged in extreme destruction of property and there is a reasonable probability that this conduct will be repeated.

Previous episodes of dangerousness to others, when applicable, may be considered when determining the reasonable probability of future dangerous conduct. Clear, cogent, and convincing evidence that an individual has committed a homicide in the relevant past is evidence of dangerousness to others.

Source: NC General Statutes 122C-3

Commitment Criteria

There is a reasonable probability of the individual suffering serious physical debilitation in the near future . . .

Previous episodes of dangerousness, when applicable, may be considered when determining reasonable probability of physical debilitation . . .

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Previous episodes of dangerousness to others, when applicable, may be considered when determining the reasonable probability of future dangerous conduct. Clear, cogent, and convincing evidence that an individual has committed a homicide in the relevant past is evidence of dangerousness to others.

Source: NC General Statutes 122C-3

Commitment Criteria

There is a reasonable probability of the individual suffering serious physical debilitation in the near future . . .

Behavior that is so grossly irrational . . . or other evidence of severely impaired insight and judgment creates a prima facie inference . . .

Re Whatley – Trial Court Findings

- Respondent was exhibiting psychotic behavior that *endangered her and her newborn child*. She is bipolar and was experiencing a manic stage.
- She was initially noncompliant in taking her medications but has been compliant the past 7 days.
- Respondent continues to exhibit disorganized thinking that causes her not to be able to *properly care for herself*. She continues to need medication monitoring.
- Respondent has been *previously* involuntarily committed

Physician Report Incorporated By Reference

- Patient admitted [with] psychosis while taking care of her two-month old son.
- She has a [history of] Bipolar [disorder].
- She remains paranoid, disorganized, intrusive.
- She has very poor insight [and] judgment and needs continued stabilization.
- Tells me that she does not plan to follow up as an outpatient.

In Re Whatley, 224 N.C. App. 267 (2012)

Danger to self—

Trial court's findings do not demonstrate that there was a "reasonable probability of [respondent] suffering serious debilitation within the near future."

We hold that the trial court's findings of fact are insufficient to support its conclusions that respondent presented a danger to herself and others

Outpatient Commitment

1. Mentally ill
2. Based on psychiatric history, needs treatment to prevent further disability or deterioration that would predictably result in dangerousness
3. Current mental status or nature of illness limits or negates the patient's ability to make an informed decision to seek treatment voluntarily or to comply with recommended treatment
4. Capable of surviving safely in the community with available supervision from family, friends, or others

Outpatient Commitment

Before ordering outpatient commitment the court shall:

- Find that outpatient treatment is available from a provider that has agreed to accept the respondent as a client of outpatient treatment services
- Designate on the order the outpatient treatment provider responsible for managing the commitment
- If the provider will be providing the treatment pursuant to a contract with an LME/MCO, identify on the order the LME/MCO

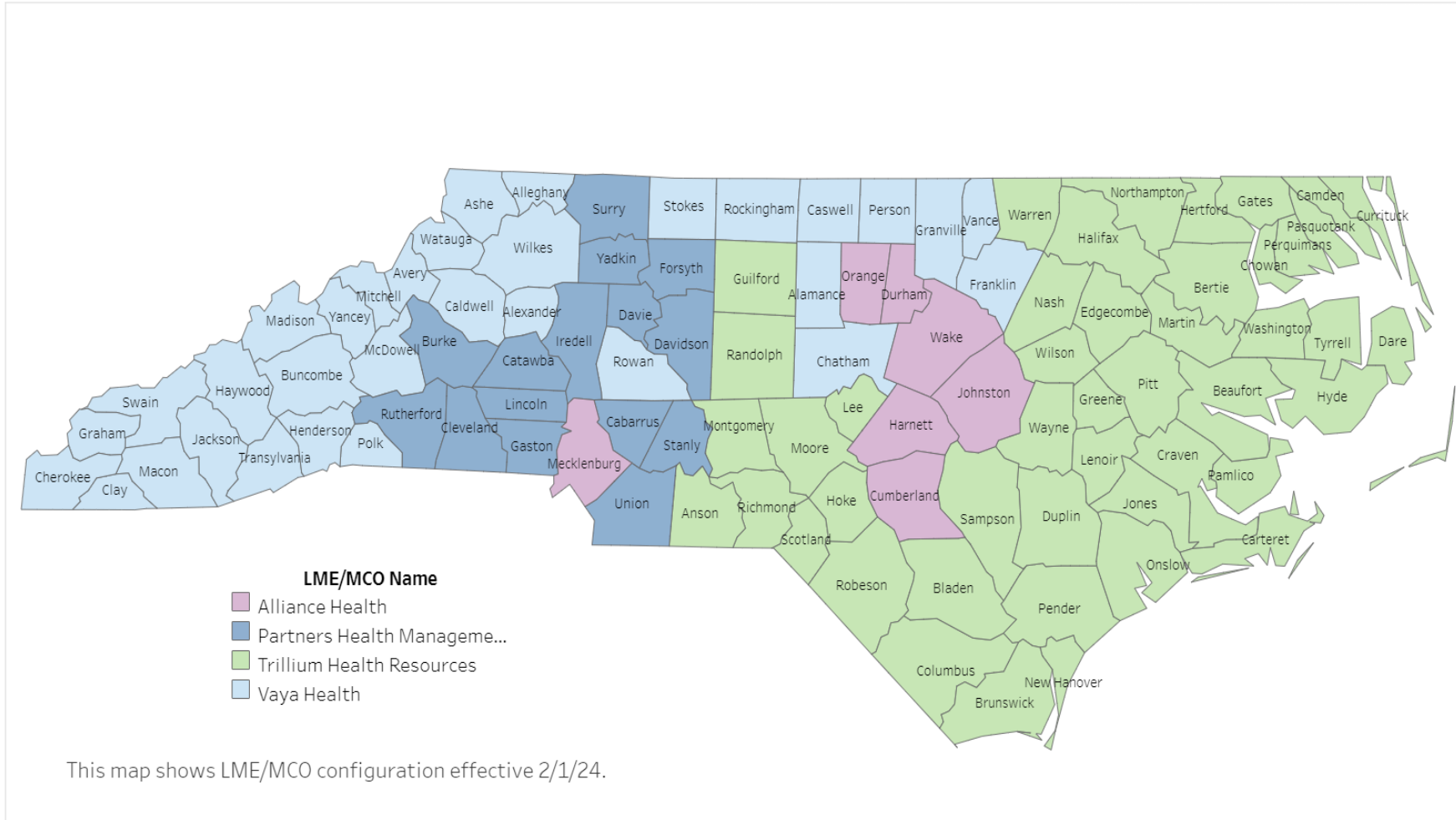
The clerk of court shall send a copy of the outpatient commitment order to the designated outpatient treatment physician or center and to the respondent or the legally responsible person.

Release and Discharge—GS 122C-266, 277

- Pending the hearing, if the attending physician determines that the respondent no longer meets the criteria for either outpatient or inpatient commitment,
 - she shall release the respondent and notify the clerk of court who must terminate the proceedings. G.S. 122C-266(d).
- At any time the attending physician determines that a committed respondent is no longer in need of inpatient commitment,
 - she shall discharge the respondent and notify the clerk of court of discharge or,
 - if respondent meets outpatient commitment criteria, ask the clerk of court for an outpatient commitment hearing. G.S. 122C-277.
- Exception: Insanity acquittees and respondents charged with violent crimes cannot be discharged without a hearing

Local Management Entity/Managed Care Organizations (LME/MCOs)

NCDHHS Currently Has 4 LME/MCOs Operating Under the Medicaid 1915 b/c Waiver



Service Authorization



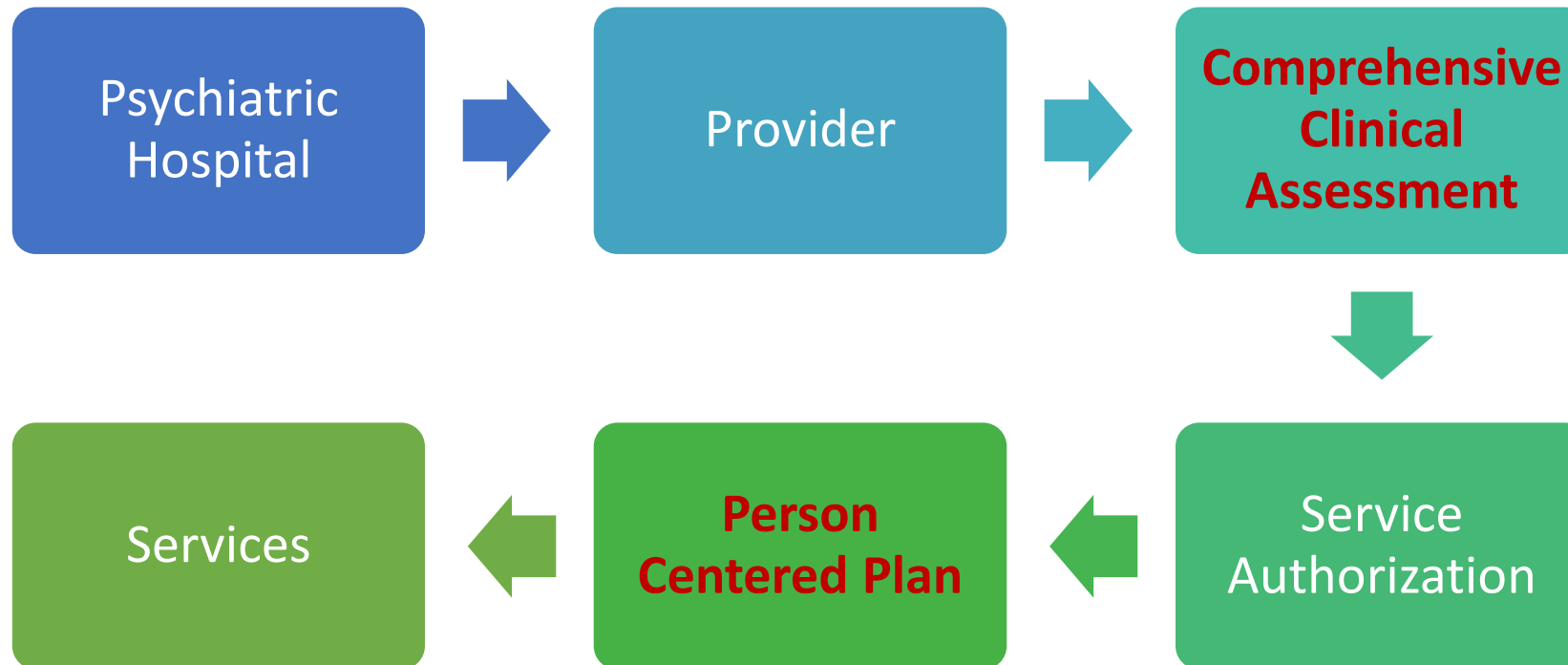
- Eligible individual?
- Covered service?
- Based on clinical assessment?
- Medically necessary?
- Qualified provider?



LME-
MCO

Provider

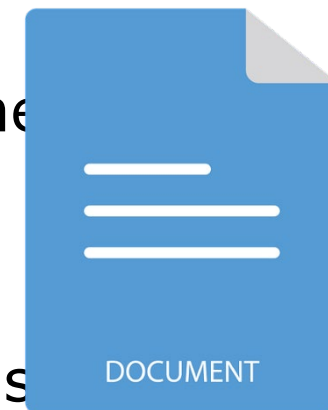
Access and Service Authorization



Comprehensive Clinical Assessment

A clinical and functional face-to-face evaluation of a person's MH, IDD, and SUD that provides the basis for a treatment or service plan.

- Identifies strengths and needs
- May include information from collateral sources, including prior treatment providers
- May include information from prior assessments
- Family/social history
- Diagnoses
- Evidence based treatment recommendations



Questions



Contact and Resources

- Mark Botts
 - 919.923.3229 mobile
 - 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](#)