

### 3.10 Emergency Procedure for Violent Individuals

#### A. Custody by Law Enforcement Officer

A law enforcement officer may take into custody a person who meets the criteria for substance abuse commitment *and* is violent and requires restraint. This procedure may be used only when the delay in taking the person for examination would be likely to endanger life or property. The law enforcement officer must immediately take the respondent before a magistrate or clerk to execute the affidavit required to initiate a substance abuse commitment. G.S. 122C-282; *see infra* Appendix A, Form AOC-SP-909M. The affidavit must include the facts concerning violence, need for restraint, and the danger posed by the delay. G.S. 122C-282.

***Substance abuse emergency procedure distinguished from mental health emergency procedure.*** The substance abuse emergency procedure differs from the mental health emergency procedure in that the mental health procedure may be initiated by anyone with knowledge of the facts supporting the affidavit rather than only by a law enforcement officer. In addition, the mental health emergency procedure bypasses the clerk or magistrate and authorizes the initiating person to take the respondent directly to an examiner.

#### B. Determination by Clerk or Magistrate

The clerk or magistrate must determine by clear, cogent, and convincing evidence if the allegations in the affidavit are true, the respondent is violent and requires restraint, and the delay caused by taking the respondent to a physician or eligible psychologist for examination would endanger life or property. On making these findings, the clerk or magistrate must order the law enforcement officer to transport the respondent directly to a 24-hour facility. G.S. 122C-282; *see infra* Appendix A, Form AOC-SP-909M (back).

The statute does not address the alternatives if the clerk or magistrate finds that the criteria for the emergency procedure are not met. It appears that the law enforcement officer could proceed as if filing a regular petition and request a custody order for transport for an examination by a physician or eligible psychologist. The clerk or magistrate could issue the custody and transport order or could find the allegations insufficient and terminate the proceeding.

#### C. Duties of 24-Hour Facility

A respondent transported to a 24-hour facility pursuant to an order of the clerk or magistrate is to be examined pursuant to the procedures for a regular substance abuse commitment, discussed *supra* in § 3.3E. G.S. 122C-282.