



UNC  
SCHOOL OF LAW

NORTH CAROLINA LAW REVIEW

---

Volume 97 | Number 4

Article 7

---

5-1-2019

# One Size Only Fits Some: Presuming Custody for the Involuntarily Committed

David B. Wall

Follow this and additional works at: <https://scholarship.law.unc.edu/nclr>



Part of the [Law Commons](#)

---

## Recommended Citation

David B. Wall, *One Size Only Fits Some: Presuming Custody for the Involuntarily Committed*, 97 N.C. L. REV. 1014 (2018).  
Available at: <https://scholarship.law.unc.edu/nclr/vol97/iss4/7>

This Recent Developments is brought to you for free and open access by Carolina Law Scholarship Repository. It has been accepted for inclusion in North Carolina Law Review by an authorized editor of Carolina Law Scholarship Repository. For more information, please contact [law\\_repository@unc.edu](mailto:law_repository@unc.edu).

## One Size Only Fits Some: Presuming Custody for the Involuntarily Committed\*

### INTRODUCTION

The American legal system depends on broad legal standards and tests to flexibly apply the law to many unique situations. Chief Justice John Marshall espoused the judiciary’s role in creating such tests to safeguard citizens from unconstitutional government action.<sup>1</sup> In some situations, however, judicially created legal tests are unnecessarily broad and have the potential to disadvantage classes of individuals—even when those tests aim to protect constitutional privileges such as the freedom from compelled self-incrimination.<sup>2</sup>

The Supreme Court of North Carolina found itself analyzing such a test when it recently considered a case involving an individual’s *Miranda* rights. A case of first impression in North Carolina,<sup>3</sup> *State v. Hammonds*<sup>4</sup> considered the custody status of an involuntarily committed individual for *Miranda* purposes.<sup>5</sup> The *Hammonds* court applied the United States Supreme Court’s decision in *Miranda v. Arizona*,<sup>6</sup> which evaluated the constitutionality of admitting into evidence “statements obtained from a defendant questioned while in custody or otherwise deprived of his freedom of action in any significant way”<sup>7</sup> when law enforcement failed to afford the defendant “procedural safeguards effective to secure the privilege against self-incrimination.”<sup>8</sup> Regarding custody, the *Miranda* Court answered with a legal standard that ultimately developed into a purportedly

---

\* © 2019 David B. Wall.

1. See *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803) (“It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule.”).

2. See U.S. CONST. amend. V.

3. *State v. Hammonds*, 243 N.C. App. 602, 622, 777 S.E.2d 359, 372 (2015) (Inman, J., dissenting) (“The issue of whether and in what circumstances police questioning of an involuntarily committed person is custodial is one of first impression in North Carolina.”), *rev’d*, 370 N.C. 158, 804 S.E.2d 438 (2017).

4. 370 N.C. 158, 804 S.E.2d 438 (2017).

5. *Id.* at 159, 804 S.E.2d at 439–40.

6. 384 U.S. 436 (1966).

7. *Id.* at 445.

8. *Id.* at 444.

“one-size-fits-all” test.<sup>9</sup> To receive the protections offered by *Miranda*, an individual must be in custody—a status that a court determines by considering the “totality of the circumstances”<sup>10</sup> as to whether “there was a formal arrest or a restraint on freedom of movement of the degree associated with formal arrest.”<sup>11</sup>

Considering the custody status of involuntarily committed persons, the Supreme Court of North Carolina flatly rejected a custody per se designation in favor of discerning custody on a case-by-case basis.<sup>12</sup> Under a custody per se designation, an individual is presumptively in custody when a certain condition is met,<sup>13</sup> unless the prosecution can rebut this presumption by showing that an exception applies.<sup>14</sup> The court’s rejection of this approach in *Hammonds* is problematic because of the resulting coercive pressures that involuntarily committed individuals experience when their liberty is restricted regardless of whether they committed a crime. Because the Supreme Court of North Carolina failed to adequately weigh these coercive pressures, it erred in applying the one-size-fits-all approach to the involuntarily committed.

This Recent Development addresses the complications of the totality-of-the-circumstances custody approach for the involuntarily committed and argues that the Supreme Court of North Carolina should have adopted a custody per se rule. In its current form, the totality-of-the-circumstances test will encroach on the constitutional privilege to be free from compelled self-incrimination for defendants who are involuntarily committed because these individuals experience preemptive and significant restrictions on liberty and are subjected to coercion by law enforcement as a result. The one-size-fits-all approach, in practice, does not fit all.

9. Charles D. Weisselberg, *Mourning Miranda*, 96 CALIF. L. REV. 1519, 1529 (2008).

10. *Hammonds*, 370 N.C. at 162, 804 S.E.2d at 442 (quoting *State v. Buchanan*, 533 N.C. 332, 339, 543 S.E.2d 823, 828 (2001)).

11. *Id.* (quoting *Buchanan*, 533 N.C. at 339, 543 S.E.2d at 828).

12. *Id.* at 165–66, 804 S.E.2d at 443–44.

13. *See* *Howes v. Fields*, 565 U.S. 499, 504–05 (2012) (reviewing the Sixth Circuit’s holding that “isolation from the general prison population combined with questioning about conduct occurring outside the prison makes any such interrogation custodial *per se*”); Luis Then, Note, *Applying the ‘Cuffs: Consistency and Clarity in a Bright-Line Rule for Arrest-Like Restraints Under Miranda Custody*, 42 FLA. ST. U. L. REV. 843, 863 (2016) (“[A]ny individual subjected to arrest-like restraints—such as being placed in handcuffs or into the back of a police car, or having weapons drawn on him—is in custody for purposes of *Miranda*.”).

14. *See* Then, *supra* note 13, at 863.

Part I of the analysis introduces *Miranda*, its progeny, and the facts and ruling of *Hammonds*. Part II discusses why the involuntarily committed require a different custody standard that provides additional protection. Part III explains the flaw in rejecting custody per se for the involuntarily committed and proposes a bright-line solution while showing that the new rule will not greatly disrupt the protections offered by *Miranda* and its progeny.

### I. BACKDROP: FROM *MIRANDA* TO *HAMMONDS*

Over four decades have passed since the Supreme Court decided *Miranda*.<sup>15</sup> Since then, the decision has facilitated a national discussion about balancing appropriate protections for the accused and the ability of law enforcement to thwart and solve crime. The doctrine, now cemented in American criminal procedure, is arguably one of the most widely recognized legal protections. Nonetheless, there have been developments and alterations to *Miranda* since its inception in 1966. A lesser-known aspect of *Miranda*—the fact that someone must be in custody to receive its protections—is the focus of this Recent Development.<sup>16</sup> This part will first discuss the specific aspects of *Miranda* protection and the test for the requisite finding of custody. Second, it will discuss the Supreme Court of North Carolina’s custody analysis in *Hammonds* and its rejection of a custody per se designation for the involuntarily committed.

#### A. *The Miranda Framework and Developments*

*Miranda* established a basic procedural framework for law enforcement when interrogating individuals suspected of crime.<sup>17</sup> The majority in *Miranda* sought to “protect persons in all settings in which their freedom of action is curtailed in any significant way from being compelled to incriminate themselves.”<sup>18</sup> To this end, the *Miranda* Court created a standard that required “procedural safeguards”<sup>19</sup> for those who have been “taken into custody or otherwise deprived of

---

15. *Miranda v. Arizona*, 384 U.S. 436 (1966).

16. See generally Then, *supra* note 13 (describing the complex analysis needed to determine whether a custodial interrogation occurred).

17. *Miranda*, 384 U.S. at 478–79.

18. *Id.* at 467.

19. *Id.* at 478–79 (stating that an individual in custody “must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires”).

freedom by the authorities in any significant way . . . .”<sup>20</sup> Although the safeguards themselves were laid out in a checklist fashion, the standard to decide who exactly is “deprive[d]” lacks uniformity among the states.<sup>21</sup> The clear-cut custody determination in *Miranda* left lower courts to grapple with custody determinations in innumerable other, more nuanced scenarios.

Ultimately, courts have settled on a totality-of-the-circumstances test that assesses the degree to which a defendant’s situation mirrors the station house at issue in *Miranda*<sup>22</sup> to determine whether an individual is in custody. The test considers (1) the circumstances surrounding interrogation and (2) within those circumstances, whether a reasonable person “[would] have felt he or she was [not] at liberty to terminate the [interrogation] and leave.”<sup>23</sup> Courts must objectively determine whether there was either a formal arrest or “restraint on freedom of movement” closely enough associated with formal arrest.<sup>24</sup> Although the *Miranda* standard for custody is considered a rigid one by its supporters and critics alike,<sup>25</sup> its applicability to specific categories of defendants has nonetheless been challenged numerous times.<sup>26</sup>

20. *Id.* at 478.

21. *See* Then, *supra* note 13, at 858–59 (discussing the two different approaches state courts have taken when determining custody). Further, the *Miranda* Court did not have to handle this deprivation of freedom issue because the defendants were arrested, taken to a station house, and questioned in an interrogation room, thus leaving little room to argue that the defendants were not in police custody. *See id.* at 846 (citing Leslie A. Lunney, *The Erosion of Miranda: Stare Decisis Consequences*, 48 CATH. U. L. REV. 727, 753–54, 768 (1999)).

22. *Howes v. Fields*, 565 U.S. 499, 509 (2012).

23. *State v. Hammonds*, 370 N.C. 158, 162, 804 S.E.2d 438, 442 (2017) (quoting *J.D.B. v. North Carolina*, 564 U.S. 261, 270 (2011)).

24. *Id.* (quoting *State v. Buchanan*, 533 N.C. 332, 339, 543 S.E.2d 823, 828 (2001)).

25. *J.D.B. v. North Carolina*, 564 U.S. 261, 282 (2011) (Alito, J., dissenting) (supporting the maintenance of the “rigidity” of *Miranda*); S. REP. NO. 90-1097, at 46 (1968), *as reprinted in* 1968 U.S.C.C.A.N. 2112, 2132 (criticizing the “rigid and inflexible requirements” of the majority opinion in . . . *Miranda*); *see also* Ellen A. Peters, *State Constitutional Law: Federalism in the Common Law Tradition*, 84 MICH. L. REV. 583, 592 (1986) (“For better or worse, the prophylactic rules of *Miranda* are today firmly embedded in the legal landscape of the law of self-incrimination.” (footnote omitted)); Cass R. Sunstein, *Problems with Rules*, 83 CALIF. L. REV. 953, 975 (1995) (using *Miranda* as an example that legal rules advantageously “embolden” and “constrain” decisionmakers, thereby promoting predictability of legal decisions and enhancing visibility and accountability for those enforcing or interpreting the rule).

26. *See, e.g., Fields*, 565 U.S. at 508 (considering whether prisoners are automatically in custody for purposes of *Miranda*); *J.D.B.*, 564 U.S. at 264 (discussing whether a child’s age is “relevant” to the custody analysis of *Miranda*).

*B. Hammonds and Custody Analysis*

*Hammonds* illustrates courts' reluctance to replace the totality-of-the-circumstances test with a presumption of custody.<sup>27</sup> The defendant, Tae Kwon Hammonds, was involuntarily committed to a local hospital after an intentional overdose.<sup>28</sup> A magistrate ordered Hammonds's commitment on the basis that he was "mentally ill and dangerous to self or others."<sup>29</sup> Meanwhile, law enforcement suspected Hammonds of committing armed robbery the night before his commitment based on video surveillance used to identify him.<sup>30</sup> The day after the magistrate ordered Hammonds's commitment, officers visited Hammonds to question him while he was involuntarily committed in the hospital.<sup>31</sup> During questioning, Hammonds made statements to the police which formed the basis of a criminal charge—robbery with a dangerous weapon—begging the question of whether he was in custody at the time of the questioning.<sup>32</sup>

The officers, wearing plain clothes, questioned Hammonds for nearly an hour and a half and "never informed the defendant he could tell them to leave"<sup>33</sup> or that he could end the questioning.<sup>34</sup> Though Hammonds had been committed to a hospital after an intentional overdose, he was not under the influence of drugs during the interrogation, and his nurse allowed the detectives into his room.<sup>35</sup> Despite Hammonds being "repeatedly told he was not under arrest,"<sup>36</sup> nor handcuffed,<sup>37</sup> he was under continuous supervision by a

---

27. See *Hammonds*, 370 N.C. at 164–66, 804 S.E.2d at 443–44; see also *Fields*, 565 U.S. at 508 (declining to find a custody per se designation when an incarcerated individual is questioned in an isolated setting about a crime committed outside the prison that was separate from the crime for which he was incarcerated). The *Fields* Court clarified that a previous opinion, *Mathis v. United States*, 391 U.S. 1 (1968), "did not hold that imprisonment alone is sufficient to constitute *Miranda* custody." *Fields*, 565 U.S. at 507; see also *State v. Fisher*, 158 N.C. App. 133, 145, 580 S.E.2d 405, 415 (2003) ("An inmate, however, is not, because of his incarceration, automatically in custody for the purposes of *Miranda*." (quoting *State v. Briggs*, 137 N.C. App. 125, 129, 526 S.E.2d 678, 680 (2000))), *aff'd per curiam*, 358 N.C. 215, 593 S.E.2d 583 (2004).

28. *Hammonds*, 370 N.C. at 159, 804 S.E.2d at 440.

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.* at 164, 804 S.E.2d at 442–43.

35. See *id.*

36. *Id.* at 164, 804 S.E.2d at 443.

37. *Id.*

hospital staff member who sat outside Hammonds's room and accompanied him to the restroom.<sup>38</sup>

Although these facts were not enough for the trial court to find a *Miranda* violation, the Supreme Court of North Carolina ultimately decided in Hammonds's favor.<sup>39</sup> Despite rejecting a custody per se designation,<sup>40</sup> the court found that Hammonds was subjected to a custodial interrogation and thus was entitled to hear his *Miranda* rights prior to the interrogation for two reasons. First, Hammonds was "severely restricted" in his freedom of movement by the commitment order since he could not leave or move independently throughout the hospital.<sup>41</sup> Second, Hammonds was in custody because the detectives not only failed to inform him that he was free to terminate questioning but also because they told him they would leave only after he answered their questions.<sup>42</sup> Thus, the court found, Hammonds was in custody.<sup>43</sup>

The Supreme Court of North Carolina, despite ruling in favor of Hammonds, missed an opportunity to better secure the Fifth Amendment privilege for those who are involuntarily committed with a custody per se designation.<sup>44</sup> As will be discussed below, because involuntary commitments implicate procedures and practices that infringe on an individual's liberty prior to criminal conviction, a constitutional protection in the form of a custody per se designation is necessary to protect those who are committed and subsequently questioned by authorities. Essentially, *Hammonds* gave law enforcement a guide on questioning tactics that will pass muster before a court, but failed to protect interviewees from the inherent coercive pressures of involuntary commitment going forward. Even

---

38. *Id.*

39. *Id.* at 166, 804 S.E.2d at 444.

40. *Id.* at 167, 804 S.E.2d at 444.

41. *Id.* at 163–64, 804 S.E.2d at 443–44 (explaining that Hammonds's "freedom of movement was already severely restricted," despite not being handcuffed or otherwise restrained, because a hospital staff member supervised Hammonds at all times and accompanied him to the bathroom). However, courts have been reluctant to hold that restricted movement is a "sufficient" condition for custody. *See id.*; *see also* *Howes v. Fields*, 565 U.S. 499, 509 (2012) ("We have 'declined to accord talismanic power' to the freedom-of-movement inquiry and have instead asked the additional question whether the relevant environment presents the same inherently coercive pressures as the type of station house questioning at issue in *Miranda*." (alteration in original) (citation omitted) (quoting *Berkemer v. McCarty*, 468 U.S. 420, 437 (1984))).

42. *Hammonds*, 370 N.C. at 166, 804 S.E.2d at 444.

43. *Id.* at 166–67, 804 S.E.2d at 444.

44. *See* U.S. CONST. amend. V.

though *Hammonds* secured a favorable verdict, other involuntarily committed defendants will not be similarly protected absent a presumption of custody.

## II. THE INVOLUNTARILY COMMITTED REQUIRE A DIFFERENT STANDARD

Understanding why the reasoning in *Hammonds* was flawed requires familiarity with involuntary commitment processes and their related issues. Scholarship and jurisprudence on involuntary commitment show that the practice implicates pressing social and legal issues—namely, adequate care for people with psychiatric and substance abuse disorders, societal safety, and due process concerns for those who are subject to the constraints of commitment.<sup>45</sup> In addition, those who are mentally ill or addicted to drugs—a large population of society—carry substantial risk of being subjected to involuntary commitment.<sup>46</sup> The balance of societal safety weighed against the liberty and health interests of the involuntarily committed currently tips heavily in favor of society: the civilly committed are not confined because of a crime they have committed but out of fear of a crime they may commit. Further, as will be discussed, there is no constitutional right for involuntarily committed individuals to receive

---

45. See, e.g., TREATMENT ADVOCACY CTR., TREAT OR REPEAT: A STATE SURVEY OF SERIOUS MENTAL ILLNESS, MAJOR CRIMES, AND COMMUNITY TREATMENT 1 (2017), <https://www.treatmentadvocacycenter.org/storage/documents/treat-or-repeat.pdf> [<https://perma.cc/BQ85-MNSN>] (discussing “each state’s structure and programming” surrounding the care for mentally ill individuals who have committed major crimes and advocating for more treatment and less jail time for these individuals); see also Austin Baumgarten, *Medical Treatment Demands Medical Assessment: Substantive Due Process Rights in Involuntary Commitments*, 45 U.C. DAVIS L. REV. 597, 603 (2011) (advocating for “medically based evaluations before emergency involuntary commitments” to better protect substantive due process rights for the involuntarily committed).

46. Bose et al., *Key Substance Use and Mental Health Indicators in the United States: Results from the 2017 National Survey on Drug Use and Health*, SAMHSA (Sept. 2018), <https://www.samhsa.gov/data/sites/default/files/cbhsq-reports/NSDUHF2017/NSDUHF2017.htm> [<https://perma.cc/G66G-E5B9>] (reporting that “46.6 million adults aged 18 or older (18.9 percent) had any mental illness . . . in the past year” as of 2017 and that 11.2 million adults had a serious mental illness). The report also noted that as of 2017, “approximately 19.7 million people aged 12 or older had a substance abuse disorder.” *Id.* As will be discussed, the requirements for involuntary commitment often include a showing of mental illness or substance abuse and a finding that the individual is a danger to themselves or others. See, e.g., N.C. GEN. STAT. § 122C-262(a) (2017). For a summary of each state’s involuntary commitment statutes, see generally TREATMENT ADVOCACY CTR., EMERGENCY HOSPITALIZATION FOR EVALUATION (2011), [https://www.treatmentadvocacycenter.org/storage/documents/Emergency\\_Hospitalization\\_for\\_Evaluation.pdf](https://www.treatmentadvocacycenter.org/storage/documents/Emergency_Hospitalization_for_Evaluation.pdf) [<https://perma.cc/76ER-YGZN>].

treatment for their conditions while confined.<sup>47</sup> Therefore, it is critical to consider the history and procedures of civil commitment, population-wide mental health and substance abuse data, and alterations to the *Miranda* custody standard to understand why the current one-size-fits-all test is not adequate to ensure the Fifth Amendment privilege against compelled self-incrimination for this group. In brief, equalizing the competing public and private interests requires more robust protection for the involuntarily committed.

#### A. *The Involuntary Commitment Process*

State standards for involuntary commitment show why the involuntarily committed merit a presumption of custody. Under North Carolina law, an individuals must undergo a four-step process before being committed.<sup>48</sup> First, a petition must be submitted to a magistrate indicating that the individual is mentally ill and either a danger to themselves or others, or “in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness.”<sup>49</sup> Second, if a magistrate finds grounds for involuntary commitment, the individual is taken into custody for an initial examination.<sup>50</sup> The individual is held at a twenty-four-hour facility until the second examination occurs.<sup>51</sup> If no such facility is available, the individual can be held in custody up to seven days, which is renewable upon subsequent allegations.<sup>52</sup> Third, if commitment is recommended by the first evaluator, a second

---

47. See *O'Connor v. Donaldson*, 422 U.S. 563, 572–73 (1975) (declining to confirm the lower court’s decision that a “person confined against his will at a state mental institution has a ‘constitutional right to receive such individual treatment as will give him a reasonable opportunity to be cured or to improve his mental condition’” (quoting *Donaldson v. O’Connor*, 493 F.2d 507, 520 (5th Cir. 1974), *vacated*, 422 U.S. 563 (1975))).

48. BENJAMIN M. TURNAGE, JOHN RUBIN & DOROTHY T. WHITESIDE, NORTH CAROLINA CIVIL COMMITMENT MANUAL 14–15 (John Rubin ed., 2d ed. 2011). Because Hammonds was admitted for mental illness, *Hammonds*, 370 N.C. at 159, 804 S.E.2d at 440, the process discussed above is specific to mental illness, though the process for substance abuse commitment is generally the same or similar, TURNAGE ET AL., *supra*, at 72.

49. See TURNAGE ET AL., *supra* note 48, at 18.

50. See *id.* at 14.

51. See *id.* at 26.

52. See *id.* at 25–26 (adding that the most problematic aspect of the process at this stage is that, as was the case in *Hammonds*, an individual does not have to be present at the initial custody hearing if they are transported to the hospital in an emergency situation, such as an intentional overdose). Although Hammonds was admitted for an intentional overdose, he was designated as mentally ill rather than a substance abuser. *Hammonds*, 370 N.C. at 159, 804 S.E.2d at 440.

examination must be performed within twenty-four hours of the individual's arrival at the facility.<sup>53</sup> Notably, a respondent could be taken into custody, recommended by the first evaluator for commitment, and held for up to seven days if no twenty-four-hour facility is available, all before the second evaluation is conducted.<sup>54</sup> Court-ordered inpatient treatment can be instituted for up to ninety days, must be administered at a twenty-four-hour facility,<sup>55</sup> and can be renewed for an additional 180 days.<sup>56</sup> Rehearings after the second commitment can extend the individual's commitment for up to a year and can be renewed indefinitely.<sup>57</sup>

In practice, involuntary commitment burdens the committed individual's liberty interests, and commitment procedures could better protect the rights of the involuntarily committed. For example, people taken into custody and evaluated for involuntary commitment are entitled to counsel during the proceedings.<sup>58</sup> According to the *North Carolina Civil Commitment Manual*, counsel is provided due to the "significant infringement on a respondent's liberty interest"<sup>59</sup> and the restriction on the individual's "freedom of movement."<sup>60</sup> Nonetheless, as discussed below, the right is not guaranteed from the outset of the proceedings. Entitlement to counsel, the principal means of legal protection for the involuntarily committed, should therefore be more safely guarded because of the liberty interests at stake.

Although the involuntarily committed do receive counsel during hearings if they cannot obtain their own, they are not entitled to representation until after admittance to a twenty-four-hour facility—a period of custody that can last up to seven days.<sup>61</sup> Generally, those subject to commitment are appointed counsel after their second evaluation, long after they have already been detained.<sup>62</sup> As a result, the appointment of counsel may be delayed when there is not a twenty-four-hour facility that can house the individual.<sup>63</sup> Even more alarming is that these seven-day detentions can be renewed

---

53. See TURNAGE ET AL., *supra* note 48, at 26.

54. *Id.* at 25–26.

55. *Id.* at 50–51.

56. N.C. GEN. STAT. § 122C-276(e) (Supp. 2018).

57. *Id.* § 122C-276(f).

58. See TURNAGE ET AL., *supra* note 48, at 13.

59. *Id.*

60. *Id.*

61. See *id.* at 14.

62. *Id.*

63. *Id.*

indefinitely as an evaluator can “begin the commitment process with a new petition and affidavit and new allegations.”<sup>64</sup> Thus involuntarily committed individuals may be held for long periods without access to counsel. Should police arrive to ask questions during this period, they are at a disadvantage without an attorney and are particularly susceptible to coercion by police. Without even basic legal protection during this seven-day period, a custody per se designation is the most administrable and effective way to protect the rights of the involuntarily committed.

*B. Origins of the Modern Involuntary Commitment Process*

United States Supreme Court jurisprudence provides the basis for state standards on involuntary commitment. Prior to 1975, state standards regarding involuntary commitment ranged from requiring a showing of mental illness and “dangerousness” to proving that a nondangerous individual was mentally ill and a pauper.<sup>65</sup> In 1975, the Supreme Court’s decision in *O’Connor v. Donaldson*<sup>66</sup> solidified the former as the baseline standard that a state must show to subject an individual to the involuntary commitment process.<sup>67</sup> Although the Court declined to determine whether a patient ordered to the care of a state hospital has a constitutional right to treatment, it ruled in the patient’s favor, explaining that “[a] finding of ‘mental illness’ alone cannot justify a State’s locking a person up against his will and keeping him indefinitely in simple custodial confinement.”<sup>68</sup> The Court briefly addressed public policy concerns by explaining that stigma against the mentally ill does not justify the deprivation of

64. *Id.*

65. Dan Moon, *The Dangerousness of the Status Quo: A Case for Modernizing Civil Commitment Law*, 20 WIDENER L. REV. 209, 212 (2014). For further discussion of the history of involuntary commitment, see *id.* at 211–15.

66. 422 U.S. 563 (1975).

67. *Id.* at 576; see also Moon, *supra* note 65, at 212 (“The modern history of involuntary commitment began with . . . *O’Connor v. Donaldson* in 1975 . . . holding that in order to constitutionally commit and confine an individual, the state must show that the person is dangerous to himself or others and that they are not capable of living safely under the supervision of family or friends.” (footnotes omitted)).

68. *O’Connor*, 422 U.S. at 575. Donaldson sued the superintendent of a Florida state hospital alleging “intentional[] and malicious[]” deprivation of his “constitutional right to liberty” when he was held as a mentally ill patient in a state hospital for fifteen years solely for being mentally ill. *Id.* at 565. Donaldson asserted that he could not be involuntarily committed because “he was dangerous to no one, that he was not mentally ill, and that, at any rate, the hospital was not providing treatment for his supposed illness.” *Id.*

liberty that the involuntarily committed experience.<sup>69</sup> The Court ultimately held that “a State cannot constitutionally confine without more a nondangerous individual who is capable of surviving safely in freedom by himself or with the help of willing and responsible family members or friends.”<sup>70</sup> Finding no evidence that Donaldson was a danger to himself or anyone, the Court ruled in his favor.<sup>71</sup>

The “dangerousness” standard created by the Court in *Donaldson* still guides state law on involuntary commitment.<sup>72</sup> The *Donaldson* decision and subsequent state legislative action show that civil commitment implicates weighty societal interests ranging from due process and welfare concerns to societal safety. By raising the standard for many states, the Court improved the due process based protections of mentally ill individuals by ensuring that they could only be taken into custody if they are a danger to themselves or society. The Court, however, also showed that the primary purpose for involuntary commitment is the *safety of the public*, not the treatment of committed individuals, since it allows for the confinement of an individual despite not being convicted of a crime and does not guarantee a right to treatment. For these reasons, appropriate legal precautions, such as a per se custody designation, should be implemented to adequately protect the rights of the civilly committed, equalizing the interests of public safety and personal liberty. The legal procedures for involuntary commitment show just how significantly an individual’s right to liberty is infringed during the commitment process, and why the scale of public and private benefit currently weighs against the private interest of personal liberty.

The facts of *Hammonds* provide an apt example. North Carolina’s emergency involuntary commitment statute, which was

---

69. *Id.* at 576.

70. *Id.*

71. *Id.* at 573.

72. See, e.g., ALA. CODE § 22-52-91(a) (Westlaw through Act 2018-579) (requiring an individual to be mentally ill and pose an immediate danger to themselves or others); CAL. WELF. & INST. CODE § 5150(a) (West Supp. 2019) (requiring that a person suffering from a mental disorder be “a danger to others, or to himself or herself”); DEL. CODE ANN. tit. 16, § 5003(c)(2) (2017) (requiring that “the psychiatrist believes the individual presents a danger to self or danger to others”); TEX. HEALTH & SAFETY CODE ANN. § 573.001(a) (Westlaw through 2017 Reg. and 1st Sess. of the 85th Leg.) (requiring a showing of “mental illness” and “a substantial risk of serious harm to the person or to others unless the person is immediately restrained”). For a compilation of each state’s emergency involuntary commitment statutes, see generally TREATMENT ADVOCACY CTR., *supra* note 46; and Baumgarten, *supra* note 45, at 602 (discussing how states had to adhere to the “‘dangerousness’ model” following the *Donaldson* decision).

applied to Hammonds, provides that anyone “who is mentally ill and either (i) dangerous to self . . . or others . . . or (ii) in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness” may be taken into custody and evaluated for involuntary commitment.<sup>73</sup> Once these requirements are met and the individual is taken into custody, involuntary commitment procedures are triggered and the State must find “by clear, cogent and convincing evidence that the respondent is mentally ill and dangerous to self . . . or dangerous to others” in order to continue confining the individual.<sup>74</sup> The magistrate ordered Hammonds’s commitment on the basis that he was a danger to himself and mentally ill when he intentionally overdosed, subjecting him to the processes described above.

Hammonds’s case provides practical insight into how swiftly the state is willing to act in instances when a potentially mentally ill individual may be dangerous to himself or others and, thus, subject to state control. While public safety is a valid justification for involuntary commitment, more can be done to protect the individual liberty side of the scale to achieve equilibrium without disrupting current procedures that protect the public. Moreover, there is a judicial avenue by which a court can achieve this equilibrium by using a custody per se designation.

### C. *Miranda Custody Has Changed*

The custody analysis in *Hammonds* shows that there is room to create a new standard for certain groups.<sup>75</sup> Thus, the “rigid” nature of

---

73. N.C. GEN. STAT. § 122C-261(a) (2017). The criteria for dangerousness to self includes an inability, “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” as well as “a reasonable probability of his suffering serious physical debilitation within the near future unless adequate treatment is given pursuant to this Chapter.” *Id.* § 122C-3(11)(a). Dangerous to others

means that within the relevant past, the individual has inflicted or attempted to inflict or threatened to inflict serious bodily harm on another, or has acted in such a way as to create a substantial risk of serious bodily harm to another, or has engaged in extreme destruction of property; and that there is a reasonable probability that this conduct will be repeated.

*Id.* § 122C-3(11)(b).

74. *Id.* § 122C-268(j).

75. See *J.D.B. v. North Carolina*, 564 U.S. 261, 271–72 (2011) (altering the totality-of-the-circumstances test for minor defendants).

*Miranda* is not necessarily immutable.<sup>76</sup> In *Hammonds*, the Supreme Court of North Carolina relied on precedent that previously altered the “analysis in cases where a minor is the defendant.”<sup>77</sup> In *J.D.B. v. North Carolina*,<sup>78</sup> the Supreme Court of the United States considered a child’s age when analyzing “the relevant circumstances of the interrogation.”<sup>79</sup> Although the Court in *J.D.B.* did not consider a custody per se designation, its decision deviated from the one-size-fits-all approach, partly because children are “most susceptible to influence”<sup>80</sup> and because a “determination of . . . youth” does not involve considering the subjective “‘mindset’ of any particular child.”<sup>81</sup>

The *J.D.B.* decision is significant for two reasons. First, it shows that the Court is willing to alter the test to determine custody in general—*Miranda* is not a hard-and-fast rule equally applied to all groups. Second, the Court is willing to adapt the test when a vulnerable class of people, susceptible to influence, is at risk of police coercion. Given the run in the fabric of the totality-of-the-circumstances test caused by *J.D.B.*, the Supreme Court of North Carolina could have pulled the thread to create a new standard for involuntarily committed individuals without drastically departing from precedent.

Individuals committed for mental illness, while categorically different from children in many respects, experience many of the same legal restrictions as children due to a similar susceptibility to influence.<sup>82</sup> Therefore, the basis for changing the custody standard for children can be applied to this different but similarly restricted group. Many legal disqualifications applied to children are similarly applied to people with mental illness. Generally, individuals under the age of eighteen are “subject to the supervision and control” of their

---

76. *Id.* at 282 (Alito, J., dissenting) (“[T]he *Miranda* court set down rigid standards that often require courts to ignore personal characteristics that may be highly relevant to a particular suspect’s actual susceptibility to police pressure.”).

77. *Id.* at 281 (majority opinion) (holding that courts must consider “all of the relevant circumstances of the interrogation,” including the age of the defendant when he or she is a minor).

78. 564 U.S. 261 (2011).

79. *Id.* at 281.

80. *Id.* at 275 (quoting *Eddings v. Oklahoma*, 455 U.S. 104, 115 (1982)).

81. *Id.*

82. *Id.*

parents.<sup>83</sup> Similarly, for the involuntarily committed, individuals are admitted and held at a twenty-four-hour facility while they await their second medical evaluation and judicial review and are committed if found to be mentally ill and a danger to themselves or others.<sup>84</sup> As a result, an involuntarily committed individual, particularly one who is indigent, is subject to the supervision and control of the state when they are taken into custody and admitted to a twenty-four-hour facility. Additionally, both the mentally ill and children are limited in their ability to contract, suggesting the inability of either to fully grasp the gravity of certain legal decisions.<sup>85</sup>

Moreover, involuntarily committed individuals are subject to the will of guardians who have powers of attorney.<sup>86</sup> Where a child's parent may be able to advocate on their behalf in a custodial interrogation,<sup>87</sup> an involuntarily committed person must rely on a nurse or other healthcare professional to act in their best interests.<sup>88</sup> Where a child may not be mature enough to make certain decisions on her own, the involuntarily committed have certain legal disqualifications imposed upon them because of their inability to care for themselves as evidenced by the commitment order.<sup>89</sup>

Because of the aforementioned legal disqualifications, the involuntarily committed are “susceptible to influence” not unlike children. Since someone is legally impaired as long as they are involuntarily committed, they are similarly “susceptible to influence” by law enforcement officials because they may fear reprisal due to psychiatric conditions.<sup>90</sup> Since “the modern practice of custodial interrogation could be psychologically coercive, rather than just physical,” additional protections should be made for individuals who

---

83. N.C. GEN. STAT. § 7B-3400 (2017). Nevertheless, there are exceptions to the general rule. *See id.* § 7B-3402 (listing exceptions to parental supervision and control if an individual under the age of eighteen is married, in the armed forces, or emancipated).

84. *See* TURNAGE ET AL., *supra* note 48, at 2.

85. *See* RESTATEMENT (SECOND) OF CONTRACTS § 12 (AM. LAW INST. 1981).

86. TURNAGE ET AL., *supra* note 48, at 2 (stating that a “legally responsible person” can be defined as a “guardian” in the case of “an adult, who has been adjudicated incompetent”).

87. *See J.D.B.*, 564 U.S. at 273 n.6.

88. *See* TURNAGE ET AL., *supra* note 48, at 2.

89. *See id.* at 3.

90. *See* *Howes v. Fields*, 565 U.S. 499, 512 (2012); *State v. Hammonds*, 243 N.C. App. 602, 611–12, 777 S.E.2d 359, 366 (2015), *rev'd*, 370 N.C. 158, 804 S.E.2d 438 (2017); TURNAGE ET AL., *supra* note 48, at 3.

have psychological ailments or issues beyond modifying the totality-of-the-circumstances test.<sup>91</sup>

So why not make mental illness a “relevant circumstance” of the interrogation and apply the totality-of-the-circumstances test to the mentally ill as was done in *J.D.B.*?<sup>92</sup> This solution would not work for the mentally ill because it would require law enforcement to look into the subjective mindset of individuals.<sup>93</sup> A finding that someone is a minor, on the other hand, involves drawing on an experience that everyone has had and what “any parent knows.”<sup>94</sup> Being a minor is a relatable aspect of being human—there is a universal understanding that children cannot comprehend the consequences of some actions.<sup>95</sup> Mental illness is a far more amorphous concept, as evidenced by extensive cataloguing of different disorders.<sup>96</sup> Childhood, by contrast, is a measurable and finite condition. By law, an individual typically reaches the age of majority at eighteen.<sup>97</sup> Alternatively, from a legal perspective, mental illness can be indefinite, as evidenced by civil commitment procedures. Therefore, since a protection must be offered for involuntarily committed individuals because of their susceptibility to influence, and since applying the totality-of-the-circumstances cannot be done without entering the subjective mindset of the mentally ill, a legal protection should take the form of a bright-line presumption.

---

91. Then, *supra* note 13, at 846.

92. *J.D.B.*, 564 U.S. at 281.

93. Mental illness may be grouped into two categories: any mental illness and serious mental illness. Bose et al., *supra* note 46. People with any mental illness are “defined as having any mental, behavioral, or emotional disorder in the past year that met DSM-IV criteria,” while people with serious mental illness experience “any mental, behavioral, or emotional disorder that substantially interfere[s] with or limited one or more major life activities.” *Id.* The DSM-V now lists over 250 mental disorders. *See generally* AM. PSYCHIATRIC ASS’N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (5th ed. 2013) [hereinafter DSM-V].

94. *J.D.B.*, 564 U.S. at 273.

95. *Id.*

96. *See, e.g.*, DSM-V, *supra* note 93, at xiii–xxxiv.

97. N.C. GEN. STAT. § 48A-2 (2017) (“A minor is any person who has not reached the age of 18 years.”). *But see id.* § 7B-3402 (“This Article shall not apply to any juvenile under the age of 18 who is married or who is serving in the Armed Forces of the United States, or who has been emancipated.”).

### III. THE FLAW IN REJECTING CUSTODY PER SE AND THE BRIGHT-LINE PROPOSAL

The Supreme Court of North Carolina erred in applying the reasoning from another custody per se case and in concluding that involuntary commitment does not warrant a custody per se standard. This part will first discuss the United States Supreme Court's reason for denying custody per se for prisoners and the Supreme Court of North Carolina's use of that decision to reject the same approach for the involuntarily committed. Next, it will show how the Supreme Court of North Carolina failed to adequately consider the Supreme Court's reasoning when applying the principles to the involuntarily committed. Finally, it explains how a bright-line custody rule for the involuntarily committed would function without implicating the concerns that many may have for bestowing a custody per se determination.

#### A. *The Supreme Court's Rejection of Custody Per Se for Prisoners*

The Supreme Court has confronted the validity of custody per se designations in a context other than involuntary commitment.<sup>98</sup> In *Howes v. Fields*,<sup>99</sup> the Supreme Court considered whether a defendant was in custody per se when he was removed from the general prison population and questioned; it determined he was not.<sup>100</sup> In *Fields*, two armed sheriff's deputies questioned Fields while he was incarcerated for a crime that occurred prior to his imprisonment.<sup>101</sup> The deputies escorted Fields to a separate interrogation room outside of the general population of the prison. There, the officers questioned him about allegations of sexual misconduct against a minor.<sup>102</sup> At the beginning of the five-hour interview, the officers informed Fields that he could leave and return to his cell at any time and did not place him in handcuffs.<sup>103</sup> The officers reminded Fields that he was free to leave and return to his cell even after he became agitated when confronted with the allegations.<sup>104</sup> Ultimately, Fields confessed to the allegations

---

98. *E.g.*, *Howes v. Fields*, 565 U.S. 499, 504 (2012) (stating that the Sixth Circuit ruled a prisoner was in custody per se when he was "isolate[ed] from the general prison population combined with questioning about conduct occurring outside the prison").

99. 565 U.S. 499 (2012).

100. *Id.* at 504, 508.

101. *Id.* at 502–03.

102. *Id.* at 502.

103. *Id.* at 503.

104. *Id.*

of sexual misconduct, but challenged the admissibility of his confession because he was not read his *Miranda* rights during questioning.<sup>105</sup> He argued that he was in custody because, during the course of the interview, he no longer wished to speak with the deputies.<sup>106</sup> Nonetheless, he did not return to his cell or request to do so.<sup>107</sup>

On these facts, the Court, balancing the totality of the circumstances, found law enforcement did not subject Fields to a custodial interrogation.<sup>108</sup> The Court noted that Fields's ability to return to his cell and the lack of physical restraint outweighed the facts that the deputies were armed, the interview extended well after Fields's bedtime and that Fields was incarcerated.<sup>109</sup>

The Court found Fields was not in custody under the totality-of-the-circumstances test after first dispensing with the custody per se designation adopted by the Sixth Circuit.<sup>110</sup> The Court rejected wholesale the Sixth Circuit's custody per se finding for three reasons: (1) authorities questioning a prisoner do not induce "the shock that very often accompanies arrest," (2) an incarcerated person knows that they are in prison for a fixed amount of time and "is unlikely to be lured into speaking" to be released sooner, and (3) prisoners know that law enforcement probably has no control to lengthen or shorten their prison terms.<sup>111</sup> Justice Alito concluded his discussion of the rejection of custody per se by stating that "a term of imprisonment, without more," falls outside of the ambit of *Miranda* custody.<sup>112</sup>

Similarly, the Supreme Court of North Carolina rejected a custody per se designation for the involuntarily committed by making an analogy to the *Fields* decision.<sup>113</sup> The Supreme Court of North Carolina adhered to the United States Supreme Court rule that "imprisonment alone is not enough to create a custodial situation

---

105. *Id.* at 504.

106. *Id.* at 503–04.

107. *Id.* at 504.

108. *Id.* at 514–15.

109. *Id.* at 514–15.

110. *Id.* at 508–09 (explaining that the custody determination is not categorically rule based but rather a consideration of whether, "in light of 'the objective circumstances of the interrogation,' a 'reasonable person [would] have felt he or she was not at liberty to terminate the interrogation and leave'" (citations omitted) (first quoting *Stansbury v. California*, 511 U.S. 318, 323 (1994) (per curiam); then quoting *Thompson v. Keohane*, 516 U.S. 99, 112 (1995))).

111. *Id.* at 511–12.

112. *Id.* at 512.

113. *See State v. Hammonds*, 370 N.C. 158, 163, 804 S.E.2d 440, 443 (2017).

within the meaning of *Miranda*,<sup>114</sup> but failed to consider the reasoning behind the rejection of a custody per se designation in this new situation.<sup>115</sup> In brief, the Supreme Court of North Carolina erred in likening imprisonment to involuntary commitment.

*B. Involuntary Commitment and Imprisonment Are Not Analogous for Purposes of Miranda Custody Analysis*

The Supreme Court of North Carolina erroneously analogized to the prisoners in *Fields* when considering whether *Miranda* protections should automatically apply to the involuntarily committed. In its analysis in *Hammonds*, the Supreme Court of North Carolina drew on a commonality between prisoners and those involuntarily committed—the limitation on the “freedom of movement” by circumstances not connected to the interrogation—to dispense with the custody per se discussion.<sup>116</sup> However, the lack of consideration of the reasoning in *Fields* leaves open the inquiry into whether involuntarily committed individuals really should be treated the same as prisoners. With this inquiry left open, this section demonstrates that the same assumptions made by the *Fields* Court for incarcerated persons do not apply to the involuntarily committed for purposes of determining custody.

1. Involuntarily Committed Individuals May Be Lured into Speaking and May Not Know Who Determines Custody

One who is involuntarily committed could be “lured into speaking by a longing for prompt release.”<sup>117</sup> Unlike prisoners, individuals committed for mental illness in North Carolina are confined for generally shorter periods of time that are renewable at the end of each period.<sup>118</sup> An individual’s commitment status depends on subsequent physician evaluation and a judicial order releasing or extending commitment.<sup>119</sup> But nothing in the process, at least under North Carolina law, is designed to ensure that an individual understands this process until the individual receives counsel at the

114. *See id.* at 165, 804 S.E.2d at 443 (quoting *Fields*, 565 U.S. at 511).

115. *See id.* at 165–66, 804 S.E.2d at 443 (analyzing the factors considered by the Sixth Circuit and its conclusion, but failing to address *why* those factors were considered).

116. *See id.* at 166, 804 S.E.2d at 444.

117. *Fields*, 565 U.S. at 511.

118. *See* TURNAGE ET AL., *supra* note 48, at 57 (stating that increasing periods of confinement may culminate in “commitment . . . for a total of 365 days”).

119. *Id.* at 3.

second evaluation stage.<sup>120</sup> Therefore, an involuntarily committed individual could cooperate with authorities believing that doing so will prove he is no longer impaired and is ready to be released or treated on an outpatient basis.<sup>121</sup>

Granted, opponents of a custody per se designation could argue that if an individual believed that the medical staff, and not the authorities, had the power to release them, this could weigh against finding that the person was in custody under the totality-of-the-circumstances. While it is possible that an involuntarily committed individual could believe this to be true at the outset, efforts to convince medical staff will prove fruitless because, ultimately, a judge decides whether or not a committed person should be released.<sup>122</sup> Since a committed individual's initial attempts to try to convince medical staff to release him will be ineffective, he would probably be lured into speaking to other people he comes in contact with, including law enforcement.

Finally, an involuntarily committed individual may not understand the legal process behind their commitment, having not been read their rights nor given the benefits of counsel prior to confinement in the way that criminal defendants are, and additionally are unable to care for themselves as a matter of law.<sup>123</sup> An involuntarily committed individual is less likely to know who has the authority to shorten or lengthen their sentence and, therefore, is not similarly situated to incarcerated individuals.<sup>124</sup> This is because, as stated above, the right to counsel exists for the involuntarily committed only after the individual is taken into custody, and they typically do not receive counsel until their second evaluation—after potentially having been in custody for seven days.<sup>125</sup> Therefore, the involuntarily committed are not similarly situated as prisoners to the extent that they could be lured into speaking to anyone, including law

---

120. *Id.* at 13–14 (stating that a person who is being involuntarily committed “has the right to counsel through all stages of the proceedings” but in most cases “counsel is [not] appointed [until] after the [person’s] second evaluation”).

121. *See id.* at 15 (recognizing that outpatient commitment “involves less restriction of freedom and fewer collateral consequences than an inpatient commitment”).

122. *See id.* at 3 (explaining that “regardless of the physician’s or eligible psychologist’s request,” the court is free to determine which type of commitment is to be ordered).

123. *See State v. Hammonds*, 243 N.C. App. 602, 623, 777 S.E.2d 359, 372–73 (2015) (Inman, J., dissenting), *rev’d*, 370 N.C. 158, 804 S.E.2d 438 (2017).

124. *See TURNAGE ET AL.*, *supra* note 48, at 13–14 (noting respondent’s right to counsel while acknowledging that appointment of counsel is often delayed for as many as seven days after the respondent’s initial detention).

125. *See supra* text accompanying note 120.

enforcement, and they do not have reason to know who makes the decision as to their commitment status.

2. An Involuntarily Committed Individual Would Experience “the Shock that Very Often Accompanies Arrest” When Questioned by Authorities

The *Fields* Court expounded on the “shock” concept by explaining that it involves “a sharp and ominous change” that results in a person being “cut off from his normal life and companions.”<sup>126</sup> Further, the Court stated that the “expected and familiar” aspects of imprisonment “do not involve the same ‘inherently coercive pressures’” that a person who is questioned by authorities outside of prison may experience in the same setting. The civil commitment process, on the other hand, represents a sharp and ominous change because it cuts people off from their normal life and companions, and involves the same inherently coercive pressures present at the station house in *Miranda*. Involuntarily committed individuals are taken to an emergency room against their will and held with less judicial process than prisoners. As a result, civilly committed individuals would experience the shock that accompanies arrest when questioned. Consequently, the Supreme Court of North Carolina erred when it arbitrarily analogized imprisonment to involuntary commitment.

They also experience shock upon being questioned by authorities because an involuntarily committed individual does not have the same procedural protections as a prisoner.<sup>127</sup> Prisoners and the involuntarily committed both benefit from having a right to counsel but prisoners benefit from this right prior to being confined.<sup>128</sup> Prisoners are not so confined without being read their *Miranda* rights, being informed of the wrong they committed, and being afforded the right to be tried by their peers or pleading guilty. These protections ensure that the rights of prisoners are not infringed upon without adequate process. Further, the Fifth Amendment protection against double jeopardy ensures that prisoners are confined for a set period of time and for only one length of time for each crime.<sup>129</sup>

---

126. *Howes v. Fields*, 565 U.S. 499, 511 (2012).

127. *Id.*

128. *See* U.S. CONST. amend. VI.

129. *See id.* amend. V.

Additionally, prisoners are generally confined for breaking the law in the past, not for potential harms they may cause in the future.

In contrast, involuntarily committed individuals do not reap the benefit of a formal criminal process like incarcerated individuals.<sup>130</sup> As a result, involuntarily committed individuals often have no reason to be aware of their constitutional privilege to be free from compelled self-incrimination solely by way of the commitment process.<sup>131</sup> Whereas prisoners have been read their *Miranda* rights and had access to representation during trial, involuntarily committed individuals may be detained without being read their rights<sup>132</sup> or attending the hearing.<sup>133</sup> In addition, involuntary commitment is indefinite, unlike the sentencing requirements for prisoners. Moreover, the involuntarily committed are confined because of actions they may commit in the future, not crimes they have committed in the past. These differences expose the flaw in the Supreme Court of North Carolina's reasoning in *Hammonds* because the court sidestepped these basic procedural differences when it rejected custody per se for the involuntarily committed.

Involuntarily committed individuals, by law, are incapable of caring for themselves. They should not be charged with ensuring that their Fifth Amendment privilege is protected without being informed of their right to counsel for crimes that may have been committed beyond the actions that facilitated commitment. It follows that because individuals who cannot care for themselves also should not be charged with being aware of and protecting their rights, they would be shocked by police questioning in the hospital setting for this reason. Consequently, the transportation to a hospital and subsequent commitment would represent a sharp and ominous change because it cuts a person off from their normal life and companions in an unexpected manner that an individual is not informed of as it is happening.

Further, the involuntarily committed are more like the civilian who is whisked to the station house in *Miranda* than the prisoner who

---

130. See *State v. Hammonds*, 243 N.C. App. 602, 623, 777 S.E.2d 359, 372–73 (2015) (Inman, J., dissenting) (“Unlike prison and jail inmates, who necessarily have been advised of their *Miranda* rights in the course of their prior arrests, and who often have had the benefit of counsel in the course of their criminal cases, involuntarily committed patients may have had no prior occasion to be so advised or even to think about their rights if approached by police.”), *rev'd*, 370 N.C. 158, 804 S.E.2d 438 (2017).

131. *Id.*

132. *Id.*

133. TURNAGE ET AL., *supra* note 48, at 25–26.

is questioned by authorities while in prison, as in *Fields*.<sup>134</sup> Admittedly, the confinement in a hospital, on its face, may not seem to be an inherently coercive environment like an interrogation room. Some may argue that an involuntarily committed individual may not seem to be in a coercive, police-dominated environment just by being committed, since hospitals are not places where police questioning normally occurs.<sup>135</sup> But being involuntarily committed is not like being a civilian in a hospital, because there is a legal restraint on leaving and moving about the hospital.<sup>136</sup> In *Hammonds*'s case, he could not leave to use the restroom without supervision and had a designated "sitter" outside of his room at all times. While an individual may not understand they are in custody at the outset, the realization would almost certainly set in the moment an involuntarily committed individual had to use the restroom or attempted to leave the hospital. After all, under North Carolina law, "reasonable force" can be used to restrain individuals if they attempt to leave the twenty-four-hour facility<sup>137</sup>—a practice that sharply differs from the average civilian's ability to refuse treatment and leave the hospital.<sup>138</sup> Therefore, when police question an involuntarily committed individual, the hospital room transforms into the sort of interrogation setting *Miranda* was designed to protect against—a place where an individual is "deprived of his freedom of action in any significant way."<sup>139</sup>

The essence of the shock problem lies in the swiftness by which the setting can change into a coercive environment. As law enforcement begins to question a person whose autonomy is restricted, that individual's situation represents the "sharp and ominous change" which "may give rise to coercive pressures" for the person being questioned.<sup>140</sup> If an involuntarily committed individual were to try to leave, they would be unable to do so.<sup>141</sup> And because the involuntary commitment process does not guarantee that

134. See *Howes v. Fields*, 565 U.S. 499, 502 (2012).

135. See *Hammonds*, 243 N.C. App. at 623, 777 S.E.2d at 372 (Inman, J., dissenting) ("In the hospital cases cited by the majority, the defendant was in a medical facility on his own volition, not legally restrained in any way.")

136. See *id.* (stating that the "circumstances of an involuntarily committed person are not the same as those of a typical hospital patient" because while both are in a medical facility, involuntarily committed individuals are legally restrained).

137. See N.C. GEN. STAT. § 122C-251(e) (2017).

138. The ability to refuse treatment is implied by the doctrine of informed consent. See, e.g., *id.* § 90-21.13.

139. *Miranda v. Arizona*, 384 U.S. 436, 477 (1966).

140. *Howes v. Fields*, 565 U.S. 499, 511 (2012).

141. See *id.*

individuals will understand the terms of their confinement, involuntarily committed individuals would likely believe that they are being held for the same reason they are being questioned by police. At the onset of the interrogation, the individual's setting more closely resembles the station house in *Miranda* than a prison cell. Thus, shock would set in. Where prisoners would have reason to know that they could not leave the prison and thus would not feel coerced in that environment, the exact opposite is true for involuntarily committed individuals. Where civilians would actually be able to leave, the involuntarily committed are prohibited from doing so. It follows that the involuntarily committed are at the mercy of the interrogating officers and, therefore, require a bright-line custody per se standard.

C. *A Bright-Line Test Is the Correct Solution*

A bright-line test for custody determinations is not a novel concept.<sup>142</sup> The test functions by finding custody per se when a certain condition is met<sup>143</sup> and allows for the presumption to be rebutted by law enforcement by showing that an exception applies.<sup>144</sup> In addition, the custody per se designation would not disqualify an inquiry into whether there was an interrogation or whether the defendant supplied a “voluntar[y], knowing and intelligent[.]” waiver of their right to counsel.<sup>145</sup> Such tests have been proposed to protect prisoners<sup>146</sup> and those who are subject to “particular coercive actions taken by law enforcement that are commonly associated with formal arrest,” otherwise known as “arrest-like restraints.”<sup>147</sup> Although suggested, neither imprisonment nor an arrest-like-restraints method for extending custody per se has passed muster before the Supreme Court of the United States.<sup>148</sup>

---

142. See generally Then, *supra* note 13, at 845, 862–66 (proposing a bright-line test for custody based on arrest-like restraints imposed on defendants by law enforcement).

143. See *Fields*, 565 U.S. at 504 (explaining the Sixth Circuit's ruling that “isolation from the general prison population combined with questioning about conduct occurring outside the prison makes any such interrogation custodial *per se*”); Then, *supra* note 13, at 863 (“[A]ny individual subjected to arrest-like restraints—such as being placed in handcuffs or into the back of a police car, or having weapons drawn on him—is in custody for purposes of *Miranda*.”).

144. Then, *supra* note 13, at 863.

145. See *id.*; see also *Miranda v. Arizona*, 384 U.S. 436, 477 (1966).

146. See *Fields*, 565 U.S. at 504.

147. Then, *supra* note 13, at 844, 866.

148. See, e.g., *Fields*, 565 U.S. at 507–08.

A bright-line custody per se standard should be adopted for the involuntarily committed to preserve their Fifth Amendment privilege against compelled self-incrimination.<sup>149</sup> Since rigidity is a core function of *Miranda*, other proposals for custody per se rules, such as the presence of arrest-like restraints, do not align as well with current jurisprudence. For instance, neither the *Fields* nor the *Hammonds* decision turned on whether the individual was restrained.<sup>150</sup> In fact, both decisions were decided differently, despite neither defendant being restrained during interrogation. Yet an arrest-like restraints rule has been proposed as a means of finding custody for purposes of *Miranda*. With respect to individuals who are involuntarily committed, there is a stronger argument for a custody per se rule than an arrest-like-restraints rule because individuals' civil commitment status is unambiguous.<sup>151</sup> Civil commitment is based on a judicial order for someone to enter twenty-four-hour care against their will.<sup>152</sup> Therefore, the line would be drawn at whether the individual has attained the "legal status denoting the court-ordered treatment."<sup>153</sup> Arrest-like restraints, on the other hand, are far less cut-and-dry and could range from the defendant being placed in handcuffs to having a weapon drawn on them.<sup>154</sup> A civil commitment order would provide a simpler determination than other proposals for custody with little to no need for interpretation by the courts.

*D. Custody Per Se Does Not Manifest the Fears of Miranda Dissenters*

Likewise, a custody per se rule for the involuntarily committed would not greatly affect the current tests, as some have feared.<sup>155</sup> Imposing a bright-line custody per se standard for the involuntarily committed would not be applicable to a large population. Despite mental illness affecting millions of Americans, only a small fraction

149. See U.S. CONST. amend. V.

150. See *Fields*, 565 U.S. at 515; *State v. Hammonds*, 370 N.C. 158, 163, 804 S.E.2d 440, 442 (2017).

151. See *Then*, *supra* note 13, at 866.

152. TURNAGE ET AL., *supra* note 48, at 2.

153. *Id.*

154. See *Then*, *supra* note 13, at 863.

155. See, e.g., *J.D.B. v. North Carolina*, 564 U.S. 261, 283 (2011) (Alito, J., dissenting) (warning that changes to the totality-of-the-circumstances test may force the Court "to effect a fundamental transformation of the *Miranda* custody test—from a clear, easily applied prophylactic rule into a highly fact-intensive standard resembling the voluntariness test that the *Miranda* Court found to be unsatisfactory").

are civilly committed.<sup>156</sup> Further, no other group is *both* similarly restricted in freedom of movement *and* as susceptible to influence as are the involuntarily committed. The combination of the two characteristics makes the involuntarily committed a unique group in need of a bright-line rule presuming custody. Accordingly, other groups seeking application of this designation would likely fall short because they would not be able to show similar government-imposed confinement *and* a class-wide susceptibility to influence. Regardless, if another class were able to show the same type of vulnerability that the involuntarily committed experience, a custody per se designation should not be foreclosed on that group altogether.

Those who oppose altering the totality-of-the-circumstances test or who oppose *Miranda* rights altogether may shudder at the idea of creating a custody per se rule for any group.<sup>157</sup> However, the fear is unfounded because the custody per se rule would allow the totality-of-the-circumstances test to remain intact for all other groups not similarly restrained. Thus, while *J.D.B.* offers a legal basis for proposing a change to the standard, the elevated vulnerability of the civilly committed allows the custody per se rule to keep from further muddying the waters by altering the custody standard for only one group.

Additionally, the interests in general societal security, “swift and sure apprehension” as a means of deterrence, and rehabilitation espoused by Justice White in his dissent in *Miranda* are either served or unaffected by this rule.<sup>158</sup> Unlike those who are “whisked” from their homes<sup>159</sup> and questioned at a police station, the involuntarily committed will still be confined to the facility even if they do not

---

156. While North Carolina does not compile data on the number of civil commitments in the state, other states do. *See generally* AA ALLEN & JK BONNIE, UNIV. OF VA. INST. OF LAW, PSYCHIATRY & PUB. POLICY, ANNUAL STATISTICAL REPORT: ADULT CIVIL COMMITMENT PROCEEDINGS IN VIRGINIA FYI 2015 (2015), [https://static1.squarespace.com/static/589a1500893fc0cfe2b5fc5/t/58a3606fd1758eb85565da95/1487102064073/AnnualReport\\_FY15\\_Adults.pdf.pdf](https://static1.squarespace.com/static/589a1500893fc0cfe2b5fc5/t/58a3606fd1758eb85565da95/1487102064073/AnnualReport_FY15_Adults.pdf.pdf) [<https://perma.cc/B4LF-F9XW>]; CAL. DEP’T OF HEALTH CARE SERVS., CALIFORNIA INVOLUNTARY DETENTIONS DATA REPORT: FISCAL YEAR (FY) 2015–2016 (2017), [https://www.dhcs.ca.gov/services/MH/Documents/FMORB/FY15-16\\_Involuntary\\_Detentions\\_Report.pdf](https://www.dhcs.ca.gov/services/MH/Documents/FMORB/FY15-16_Involuntary_Detentions_Report.pdf) [<https://perma.cc/G2FV-DLKK>]; Annette McGaha, Paul G. Stiles & John Pettila, *Emergency Involuntary Psychiatric Examinations in Florida*, PSYCHIATRIC SERVS., Sept. 2002, at 1171.

157. *See J.D.B.*, 564 U.S. at 281–82 (Alito, J., dissenting) (describing an alteration to the totality-of-the-circumstances” test as “fundamentally inconsistent” with providing a “clear rule”); *see also* *Miranda v. Arizona*, 384 U.S. 436, 526 (1966) (White, J., dissenting) (stating that there is no precedent for the procedural safeguards offered by *Miranda*).

158. *See Miranda*, 384 U.S. at 539–41 (White, J., dissenting).

159. *See Howes v. Fields*, 565 U.S. 499, 499 (2012).

cooperate with authorities.<sup>160</sup> Thus, they will not be free to harm another by refusing to answer questions for the authorities. Moreover, deterrence is unaffected because the custody per se rule would only apply to individuals who are already confined and, therefore, already “apprehended” to a degree.<sup>161</sup> Finally, rehabilitation is not affected because the very nature of involuntary commitment is to receive “treatment . . . for mental health or substance abuse.”<sup>162</sup> So while judges who differ in their approaches to implementing *Miranda* have been reluctant to allow for a custody per se rule,<sup>163</sup> it is time to create a new standard to protect this vulnerable group.

#### CONCLUSION

One of the core foundations of *Miranda* is that it “places a high value on clarity and certainty.”<sup>164</sup> However, the need for clarity and certainty cannot be achieved at the expense of a right that is “fundamental with respect to the Fifth Amendment privilege.”<sup>165</sup> For those who are involuntarily committed, the current test is applied too broadly and does not offer precautions to guard them from coercion. Since *Miranda* and its progeny have hardly budged in considering “whether the defendant was aware of his rights without a warning being given,”<sup>166</sup> a bright-line test presuming custody preserves the objectivity of *Miranda* and protects the interests of the involuntarily committed. By analogizing involuntarily committed individuals to prisoners simply because both are “restrained,” the *Hammonds* court erred in unilaterally denying a custody per se rule for the involuntarily committed. And since involuntarily committed individuals are “susceptible to influence” but unable to benefit from a modified totality-of-the-circumstances test, they need this

160. By law, an individual committed on an inpatient basis for mental illness cannot be released until “the criteria for inpatient commitment are no longer met.” TURNAGE ET AL., *supra* note 48, at 52.

161. See *Miranda*, 384 U.S. at 539–41 (White, J., dissenting).

162. TURNAGE ET AL., *supra* note 48, at 2.

163. Compare *State v. Hammonds*, 243 N.C. App. 602, 609, 777 S.E.2d 359, 365 (2015) (rejecting a custody per se rule for the involuntarily committed), *rev'd*, 370 N.C. 158, 804 S.E.2d 438 (2017), *with id.* at 622, 777 S.E.2d at 372 (Inman, J., dissenting) (“I agree with the majority that the nature of involuntary commitment does not render police questioning custodial *per se* . . .”).

164. *J.D.B. v. North Carolina*, 564 U.S. 261, 282 (2011) (Alito, J., dissenting).

165. *Miranda*, 384 U.S. at 476.

166. *Id.* at 468.

presumption to protect their constitutional privilege to be free from compelled self-incrimination. In sum, a bright-line test for custody for the involuntarily committed preserves the rights protected by *Miranda* without disrupting the legal landscape *Miranda* is built upon.

DAVID B. WALL\*\*

---

\*\* I would like to express sincere gratitude to my Primary Editor, Natalie Minois, for her diligent and unwavering efforts in preparing this Recent Development for publication. I appreciate Professor Richard Myers and fellow *North Carolina Law Review* Staff Members Matthew Amrit, Sean Placey, and Erin Wilson for their advice and guidance throughout the writing process. Finally, I am thankful for my loving parents, Jim and Amy, who always find time to support me and my eight siblings in everything that we strive to achieve.