

Revision of North Carolina Laws Pertaining to Involuntary Commitment (IVC)

Session Law 2018-33

Senate Bill 630

Carrie L. Brown, MD, MPH

Chief Medical Officer for Behavioral Health & IDD

NC Department of Health and Human Services

February 7, 2019

Involuntary Commitment

- The purpose of this presentation is to provide a **high level overview** of the changes to the Involuntary Commitment Laws in North Carolina as a result of SB630.

- For more **detailed** information please reference:

<https://www.ncleg.net/Sessions/2017/Bills/Senate/HTML/S630v4.html>

Objectives

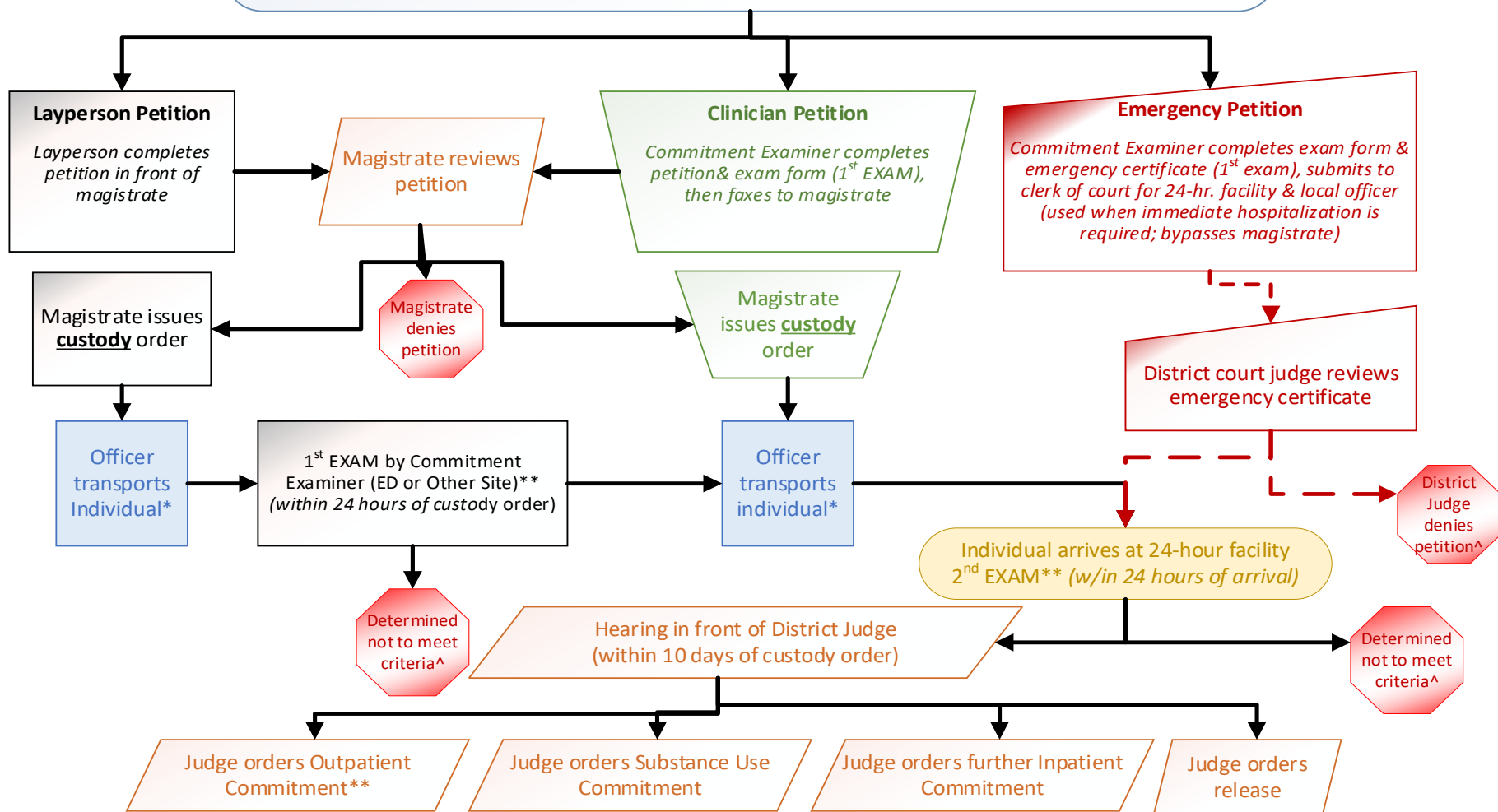
- **Introduction to IVC**
- **Understand the process for IVC in NC**
- **Understand the revisions to IVC Law**

Involuntary Commitment

- IVC Laws **provide for custody, transportation and evaluations** for individuals identified as potentially having a mental illness or substance use disorder that **may be a danger to themselves or others.**
- IVC also allows **an individual found to be a danger to themselves or others to be remanded into the custody of a facility** that provides treatment for mental illness or substance use when that individual does not voluntarily seek treatment.

NC Involuntary Commitment Process (IVC): Inpatient Treatment[^]

Individual shows signs/symptoms (Psychiatric or Substance Use) that indicate potential danger to self or others



Based on Information from Criteria for Involuntary Commitment in NC (Mark Botts, 2009, UNC School of Government); Commitment Issues for Law Enforcement (NCAG, 2014); and SB630 IVC Revisions (2018). * Officer must take the individual into custody within 24 hours or new order needed. **If individual is found in need of Involuntary Outpatient Psychiatric or Substance Use Treatment, the provider will be identified and the individual will be released from custody; returned to residence after 1st Exam. ^If determined not to meet IVC criteria, individual is released and proceedings are terminated.); ^^Individual can, at any time, elect to have voluntary treatment. If voluntary, law enforcement will not transport.

Paths to IVC - Petition for Evaluation

- **Petition to magistrate**
 - Family member, friend, police officer or concerned citizen
- **Clinical or Emergency petition***
 - NC approved medical or behavioral health professional (Commitment Examiner)

***Previous law only allowed physician or eligible psychologist**

Examination

- Magistrate issues custody order for **first examination**
- If the **first examination determines** the individual **meets criteria for IVC**, then the individual is transferred to a designated IVC facility and a **second evaluation** is completed by a **physician within 24 hours**
- If the **second exam** also determines that IVC criteria is met, the individual **may be held for treatment**

Duration

The law **provides for structured re-evaluation** of the individual for the determination of:

- **continued IVC treatment**
- **termination** of IVC custody order
- **need for outpatient commitment.**

Revisions to NC IVC Laws

NEW: Commitment Examiner Definition

A physician, an eligible psychologist, **or any health professional or mental health professional** who is **certified under G.S. 122C-263.1** to perform the first examination for involuntary commitment described in G.S. 122C-263(c) or G.S. 122C-283(c)

SOURCE: GS 122C-3(8a)

REVISED: Commitment Examiner

Additional Professionals eligible to become commitment examiners effective October 1, 2019

- Licensed Clinical Social Worker (LCSW)
- Master's level *Licensed* Clinical Addictions Specialist (LCAS)
- Licensed Professional Counselor (LPC)*
- Physician's Assistant (PA)*
- Master's or higher level degree *Nurse Practitioner (NP)***

*Professional groups newly eligible effective October 1, 2019

**Formerly only Masters Level Psychiatric nurses

SOURCE: GS 122C-263.1

REVISED: Commitment Examiner Certification

- The waiver process has been **replaced by a direct application process** through DHHS for eligible professionals.
- Applicants will still be **required to complete training and testing**.
- The process will be available on the DMH/DD/SAS website.

SOURCE: GS 122C-263.1

NEW: Health Screening Definition

An **appropriate screening** suitable for the symptoms presented and within the capability of the entity, including ancillary services routinely available to the entity, **to determine whether or not an emergency medical condition exists**

SOURCE: GS 122C-3(16a)

NEW: Health Screening

A health screening shall be completed, **conducted by a commitment examiner or other individual** who is determined by the area facility, contracted facility, or other location to be **qualified to perform the health screening**, and in conjunction with the first examination. The screening may happen **face-to-face or utilizing telemedicine** equipment and procedures.

SOURCE: GS 122C-263(a1), -283(a1)

NEW: Health Screening Tool

The Department will work with commitment examiner professionals to develop a health screening tool.

Documentation of the completed screening shall accompany the individual or otherwise be made available at time of transport.

SOURCE: GS 122C-263(a-a1),-283(a1)

NEW: Inclusion of Incapable Adult Definition

- In the opinion of a **physician or eligible psychologist**, the person currently lacks sufficient understanding or capacity to make and communicate mental health treatment decisions
- An **incapable adult has not been adjudicated incompetent**. Capacity determination is made by a physician or eligible psychologist, whereas a finding of incompetence is made by the courts.

SOURCE: GS 122C-3(16b), -72(4)

Revised: Voluntary Admissions of Individuals Determined to be Incapable

- Persons found to be **incapable at the time of admission** may **only be held for 15 days** of treatment. A facility may file a petition for IVC if an individual who was admitted voluntarily, but found to be incapable if they meet criteria at the conclusion of their 15-day maximum stay.

SOURCE: GS 122C-213

NEW: Community Crisis Services Plan

- Every LME/MCO shall adopt a ***community crisis services plan*** to facilitate 1st exams in conjunction with a health screening at the same location.
- This plan shall be comprised of separate “***local area crisis services plans,***” for each of the local areas or regions within the catchment area (local areas/regions defined by LME/MCO’s).
- **Affected agencies shall participate** in the development of the plan.
- The local plan, which must be agreed upon, in writing, by all participating agencies, **shall be submitted to DMH/DD/SAS on or before October 1, 2019.**
 - If the area authority modifies the plan, the modified plan shall be submitted to DMH/DD/SAS at least 10 days prior to the new plan’s effective date

SOURCE: GS 122C-202.2; GS 122C-294(a)

NEW: Community Crisis Services Plan

- **Agencies that shall participate** in the development of local area crisis services plans **include:**
 - Law Enforcement Agencies
 - Acute Care Hospitals
 - Magistrates
 - Area Facilities with Identified Commitment Examiners
 - Other affected agencies
- **Other stakeholders** identified by the LME/MCO may be invited to participate in the planning. (Department expects this will include persons with lived experience, families, advocates, etc.)
- The developed **plan is effective when all entities agree in writing** to the plan. If any member of the Crisis Planning Committee does not agree to the plan in writing, the Secretary shall develop a procedure to attempt to resolve the conflict in order to achieve approval of the plan.

SOURCE: GS 122C-202.2

Community Crisis Services Plan Requirements

Each local plan shall do at least the 3 following items:

- **Incorporate** the involuntary commitment **transportation agreement** for the cities/counties with the area.
- **Identify one or more facilities** that will contract with the LME/MCO to provide 1st exams in conjunction with health screenings
- Identify **training for transporters**

Source: GS 122C-202.2

Community Crisis Services Plan Requirements

- Identify available training for law enforcement personnel, **other transportation and custody providers**. Persons who are not law enforcement are required to take the training; officers may request to participate in the training.

The **training shall address**

- **use of de-escalation** strategies/techniques
- **safe use of force and restraint**
- **respondent rights** relevant to custody/transportation
- location of **identified facilities**
- **completion and return of custody order** to the clerk of superior court

SOURCE: GS 122C-202.2

REVISED: Transportation Plan

- The **governing body of a city or county** *shall* adopt a plan known as an **“involuntary commitment transportation agreement”** or “transportation agreement” for the custody and transportation of respondents.
 - **Law enforcement and other affected agencies**, including local acute care hospitals and other mental health providers, *shall participate in developing the agreement.* The area authority *may* participate.
- The transportation agreement shall be **submitted by January 1, 2019 to:**
 - **Magistrates** in the city or county
 - **County clerks** of court
 - **LME/MCO** that serves the city or county
 - **DMH/DD/SAS**
- If the city or county **modifies the plan**, the modified plan shall be submitted to the above noted entities **at least 10 days prior to the effective date** of the new plan.

SOURCE: GS 122C-251(g)

NEW: Custody and Transportation

- **The agreement** may designate officers, volunteers, or other personnel to provide all or part of the transportation required.
- The agreement may **designate volunteers, or other public or private personnel**, who have **agreed in writing** to provide all/part of the custody and transportation required.
- **Cities and counties are responsible for custody and transportation**; the county is responsible for persons who are physically taken into custody outside the city limits.

SOURCE: GS 122C-251(g)

Custody and Transportation

- **Any use of restraints shall be as reasonably determined by the officer** to be necessary under the circumstances for the safety of the respondent, the law enforcement officer and other persons.
 - Every effort **to avoid restraint of a child under the age of 10** unless the child's behavior or other circumstances dictate that restraint is necessary.
- **NEW:** With the exception of circumstances in which information is confidential or would otherwise compromise a law enforcement investigation, **the officer shall respond to all inquires from the facilities concerning the respondents' behavior** and the use of any restraints related to the custody and transportation of the respondent.

SOURCE: GS 122C-251(a-f)

Custody and Transportation

- Upon assuming custody, individual shall be transported to:
 - a) A **facility or other location identified** by the LME/MCO in the community services crisis plan, unless exigent circumstances require the respondent be transported to an emergency department.
 - b) If a) not available, **an alternative non-hospital provider** (provider of either behavioral or medical health services) or facility-based crisis center to complete the same process.
 - c) If a) and b) not available, **a private hospital or clinic, a general hospital, an acute care hospital, or a State facility** for the mentally ill. If no examiner is available, the individual may be temporarily detained in an area facility or under appropriate supervision.

SOURCE: GS 122C-263(a)

NEW: Custody/First Examination

- When the commitment examiner recommends inpatient commitment and the need is documented on the examination report, **transportation to a 24-hour facility shall occur *within six (6) hours of notification**** of availability from the accepting facility.
- Proceedings shall be **terminated after seven (7) days** if an appropriate facility is not available. *A commitment examiner may initiate a new IVC proceeding prior to the expiration of this seven-day period, provided the individual continues to meet applicable criteria. A new examination is required.*

* For law enforcement: “to the extent feasible, the law enforcement officer shall act within 6 hours of notification.”

SOURCE: GS 122C-263(d)(2)

REVISED: District Court Hearing

- To the extent feasible, **hearings shall be held** in an appropriate room where the individual is being treated in a **manner approved by the chief district court judge** within the presiding district, in the judge's chambers, **or by audio/video transmission**. If the respondent, through counsel, objects to a hearing by audio/video transmission, the hearing shall be held in the physical presence of the presiding district court judge.
- Regardless of manner, hearings shall be held in a manner that **complies with any applicable federal and State laws governing the confidentiality and security** of confidential information, including any information transmitted from the treatment facility by audio/video transmission.

SOURCE: GS 122C-263(d)(2)

NEW: Data Submission

The **Department shall provide the data** collected by DMH/DD/SAS concerning the **number of respondents receiving treatment under IVC in designated facilities** to the Fiscal Research Division and the Joint Legislative Oversight Committee for Health and Human Services **on October 1** of each year **beginning in 2019** and any other time upon request.

SOURCE: GS 122C-294(b)