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

Session Law 2018-33

Senate Bill 630

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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:

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

**NC Involuntary Commitment Process (IVC): Inpatient Treatment**

- **Layperson Petition**
  - Layperson completes petition in front of magistrate
- **Magistrate reviews petition**
- **Magistrate issues custody order**
- **Officer transports Individual**
- **1st EXAM by Commitment Examiner (ED or Other Site)** (within 24 hours of custody order)
- **Determined not to meet criteria**
  - Hearing in front of District Judge (within 10 days of custody order)
  - Judge orders Outpatient Commitment
  - Judge orders Substance Use Commitment
  - Judge orders further Inpatient Commitment
  - Judge orders release

- **Clinician Petition**
  - Commitment Examiner completes petition & exam form (1st EXAM), then faxes to magistrate
- **Magistrate denies petition**
- **Magistrate issues custody order**
- **Officer transports individual**
- **District court judge reviews emergency certificate**
- **Individual arrives at 24-hour facility 2nd EXAM** (within 24 hours of arrival)
- **Determined not to meet criteria**
  - Hearing in front of District Judge
  - Judge orders Outpatient Commitment
  - Judge orders Substance Use Commitment
  - Judge orders further Inpatient Commitment
  - Judge orders release

- **Emergency Petition**
  - Commitment Examiner completes exam form & emergency certificate (1st exam), submits to clerk of court for 24-hr. facility & local officer (used when immediate hospitalization is required; bypasses magistrate)
  - District Judge denies petition

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*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)
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 Master’s 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)**
• 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)