



# SENATE BILL 630: Revise IVC Laws to Improve Behavioral Health.

2017-2018 General Assembly

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<b>Committee:</b> House Health	<b>Date:</b> June 13, 2018
<b>Introduced by:</b> Sens. Hise, Krawiec, Randleman	<b>Prepared by:</b> Jason Moran-Bates
<b>Analysis of:</b> Second Edition	Staff Attorney

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**OVERVIEW:** *Senate Bill 630 would make changes to the laws for voluntary and involuntary commitment for the mentally ill and substance abusers, which are found in Chapter 122C of the General Statutes.*

## BILL ANALYSIS:

**Section 1** of the bill would amend G.S. 122C-3 to:

- Add definitions for "commitment examiner," "incapable," "medical screening," "outpatient treatment physician," and "outpatient treatment center."
- Clarify that a "legally responsible person" for an individual without a health care power of attorney includes an attorney-in-fact under a general power of attorney, spouse, parents and children, siblings, or any other person with a relationship to that individual. This list mirrors the list of people who can provide consent for medical treatment under G.S. 90-21.13(c)
- Eliminate the definition of "program director."

**Section 2** of the bill would amend G.S. 122C-4 to clarify that "legally responsible person" for an incapable adult is a:

- Person named under a healthcare power of attorney.
- Person named in an advance instruction for mental health treatment.
- Any of the other individuals listed in the new definition for "legally responsible person."

**Section 3** of the bill would make conforming changes to G.S. 122C-55.

**Section 4** of the bill would amend G.S. 122C-54 to allow the facility conducting an examination of the respondent to furnish records pertinent to the proceedings to the court, respondent's counsel, and the state's attorney. Non-pertinent medical records could only be disclosed pursuant to a court order.

**Section 5** of the bill would add definitions for "facility," "area facility," and "secretary" to G.S. 122C-55. It would also add a new subsection permitting a facility to provide confidential information to a county Sheriff on clients in need of treatment for mental illness, developmental disabilities, or substance abuse when the Sheriff requests that information. The Sheriff may also provide the same information on former inmates to any facility in which those inmates seek treatment. All information may be disclosed without consent of the client or inmate.

**Section 6** of the bill would add community crisis services planning to the list functions of Local Management Entities (LME) in G.S. 122C-115.4.

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**Section 7** of the bill would amend G.S. 122C-117 to require a Local Management Entity/Managed Care Organization (LME/MCO) to develop, obtain agreement to, and adopt a community crisis services plan under G.S. 122C-202.2.

**Section 8** of the bill would amend G.S. 122C-202.2 to require LME/MOCs to create a community crisis services plan, with the purpose of facilitating a first examination in conjunction with a medical screening. This plan would be required to:

- Incorporate the IVC transportation agreement adopted pursuant to G.S. 122C-251(g), which identifies the law enforcement organization responsible for custody and transportation of respondents.
- Identify the facility responsible for providing the first screening of respondents.
- Identify training for law enforcement officers and designated individuals who take custody of and transport respondents.

County commissioners, law enforcement agencies, acute care hospitals, area facilities, and other affected agencies would be required to participate in creating the plan, and the LME/MCOs would be able to invite community partners and other stakeholders in formulating the plan, which may address additional topics those stakeholders deem necessary.

This section represents a substantive change from the bill as originally filed as it separates the transportation agreement (described in Section 19) below from the community crisis services plan. The transportation agreement was part of the community crisis services plan in the original bill.

**Section 9** of the bill would amend G.S. 122C-206 to:

- Require notification to be given to the legally responsible person when a minor or incapable adult is transferred from one facility to another.
- Require a facility transferring a voluntary client to an acute care hospital solely for an unrelated medical condition to hold that individual's bed slot for at least 12 hours, unless both the transferring and the receiving facility agree return in that time is not reasonable.

The bill adds the requirement that the original facility hold the patient's bed for a specified time.

**Section 10** of the bill would amend G.S. 122C-201.1 to make all individuals involved in the custody, transportation, assessment, examination, supervision, treatment, or release of a respondent or voluntary client immune from civil and criminal liability, except in the case of gross negligence.

**Section 11** of the bill would amend G.S. 122C-210.3 to allow any individual designated to transport a voluntary client under G.S. 122C-251(g) to receive an order for transport from the court.

**Section 12** of the bill would amend G.S. 122C-211 to allow information in an advanced directive for mental health treatment to be reviewed at a first evaluation.

**Section 13** would make conforming changes to G.S. 122C-212.

**Section 14** of the bill would add a new part to Article 5 of Chapter 122C regarding the admission and discharge of incapable adults.

- Incapable adults may be voluntarily admitted pursuant to an advance directive for mental health treatment or the request of an individual holding a healthcare power of attorney.
- Admitted individuals can be held for up to 15 days.
- An individual must be discharged within 72 hours if:

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- The individual is no longer incapable and either does not consent to further treatment, or requests discharge.
- The legally responsible person for an incapable individual requests discharge.

**Section 15** of the bill would amend G.S. 122C-221 to require the legally responsible person for a minor to sign an application for admission of that minor.

**Section 16** of the bill would amend G.S. 122C-224 to require a minor's application for admission to be sent to the court.

**Section 17** of the bill would clarify that Part 4 of Article 5 of Chapter 122C only applies to adults who are adjudicated incompetent, not those who are only incapable.

**Section 18** of the bill would amend G.S. 122C-232 to:

- Require the court to provide a written description of the admission and discharge process to incompetent adult respondents.
- Require the facility to notify the clerk of court that an incompetent adult has been admitted and that a hearing must be scheduled.
- Limit the maximum length of admission to 90 days.

**Section 19** of the bill would amend G.S. 122C-251 to require cities and counties to formulate involuntary commitment (IVC) transportation agreements, which must:

- Be developed in coordination with acute care hospitals, law enforcement agencies, and area authorities.
- Allow trained law enforcement officers and other trained individuals to be designated to transport IVC respondents.
- Require individuals designated to transport IVC respondents to consent to providing transportation before being designated.
- Require cities and counties to carry out all their custody and transportation responsibilities.

This section represents a substantive change from the bill as originally filed. The bill separates the transportation agreement from the community crisis services plan in Section 9. It removes the considerations law enforcement was to take into consideration before using restraints. It removes the requirement that a minor's caretaker be consulted before a minor is retrained.

In addition, force and restraint could not be used in transporting a respondent unless deemed reasonably necessary by the law enforcement official for the safety of the respondent, official, or others.

**Section 20** of the bill would add "commitment examiners" to G.S. 122C-253.

**Section 21** of the bill would make conforming changes to G.S. 122C-255.

**Section 22** of the bill would amend G.S. 122C-261 to:

- Replace references to "physician or eligible psychologist" with "commitment examiner."
- Allow examination affidavits to be transmitted electronically.
- Provide immunity for individuals involved in the commitment process unless those individuals are grossly negligent.
- Make conforming changes.

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**Section 23** of the bill would amend G.S. 122C-262 to:

- Replace references to "physician or eligible psychologist" with "commitment examiner."
- Allow temporary detention of a respondent under appropriate supervision if a facility is not available.

**Section 24** of the bill would amend G.S. 122C-263 to:

- Establish a priority list of first exam sites and a process to follow if one is not available.
- Require a medical screening at the first exam and require transportation of the IVC respondent to a facility able to handle any emergent medical conditions discovered in that exam.
- Clarify when a medical screening exam is not necessary.
- Require transportation of IVC respondents within six hours of notification that transportation is necessary.
- Replace references to "physician or eligible psychologist" with "commitment examiner."

**Section 25** of the bill would amend G.S. 122C-263.1 to allow the Secretary of Health and Human Services to certify mental health professionals, other than physicians and psychologists, to perform first examinations.

**Section 26** of the bill would amend G.S. 122C-264 to replace references to "physician or eligible psychologist" with "commitment examiner."

**Section 27** of the bill would amend G.S. 122C-265 to replace references to "physician or eligible psychologist" with "commitment examiner."

**Section 28** of the bill would amend G.S. 122C-267 to replace references to "physician or eligible psychologist" with "commitment examiner."

**Section 29** of the bill would amend 122C-268 to require hearings for IVC respondents subject to a series of successive custody orders within 10 days of the most recent order. It would also establish criteria for hearings to be held via teleconference.

**Section 30** of the bill would amend G.S. 122C-271 to require the court to make specific findings that a respondent is eligible for outpatient treatment, to list the treating facility (and LME/MCO if the treating facility is contracted with one) on the order, and to send a copy of the order to the treating facility and LME/MCO.

This section represents a substantive change from the bill as originally filed. The bill removes the requirement that outpatient treatment facilities meet specified criteria and that the court make written findings that the outpatient met those criteria.

**Section 31** of the bill would make a conforming change to G.S. 122C-276.

**Section 32** of the bill would amend G.S. 122C-281 to replace references to "physician or eligible psychologist" with "commitment examiner" and make individuals who take reasonable measures to temporarily detain a respondent civilly and criminally immune, except in cases of gross negligence.

**Section 33** of the bill would amend G.S. 122C-282 to replace references to "physician or eligible psychologist" with "commitment examiner."

**Section 34** of the bill would amend G.S. 122C-283 to:

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- Require the appropriate individual transport a respondent to a first exam site according to the criteria established in G.S. 122C-263.
- Require a medical screening at the first exam and require transportation of the IVC respondent to a facility able to handle any emergent medical conditions discovered in that exam.
- Clarify when a medical screening exam is not necessary.
- Require a facility transferring an individual in the IVC process to an acute care hospital solely for an unrelated medical condition to hold that individual's bed slot for at least 6 hours, unless both the transferring and the receiving facility agree return in that time is not reasonable.
- Replace references to "physician or eligible psychologist" with "commitment examiner."

**Section 35** of the bill would amend G.S. 122C-284 to replace references to "physician or eligible psychologist" with "commitment examiner" and allow IVC respondents and their counsel to file a waiver of the right to receive notice of a hearing.

**Section 36** of the bill would amend G.S. 122C-285 to replace references to "physician or eligible psychologist" with "commitment examiner" and require written findings in all cases.

**Section 37** of the bill would amend G.S. 122C-286 to require hearings for IVC respondents subject to a series of successive custody orders within 10 days of the most recent order and permit IVC respondents to waive personal appearance at the hearing.

**Section 38** of the bill would amend G.S. 122C-287 to require the court to follow the procedures in G.S. 122C-271(a)(3) and G.S. 122C-271(b)(4) when remanding a substance abuser who is dangerous to self or others for treatment to any non-inpatient facility.

**Section 39** of the bill would make conforming changes to G.S. 122C-290.

**Section 40** of the bill would make conforming changes to G.S. 122C-291.

**Section 41** of the bill would make conforming changes to G.S. 122C-292.

**Section 42** of the bill would make conforming changes to G.S. 122C-293.

**Section 43** of the bill would require the local plan developed under G.S. 122C-202.2 and G.S. 122C-251(g) to be submitted to the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services on or before October 1, 2019. Changes to previously filed plans would have to be filed at least 10 days before the effective date of the changes.

This section represents a substantive change from the bill as originally filed. The bill requires the local plan to be filed with the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services.

**Section 44** of the bill would require any community crisis services plan to be filed with DHHS by the earlier of (1) 12 months after CMS approves the Medicaid and NC Health Choice transformation in S.L. 2015-245, or (2) 6 months prior to the date DHHS actually initiates capitated contracts as defined in Section 4 of S.L. 2015-245.

**Section 45** of the bill would permit a State or local human services agency or a healthcare provider to file a petition for adjudication of incompetence and present evidence at a hearing on the petition without legal counsel.

This section was not in the original bill.

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**EFFECTIVE DATE:** Section 44 of this act would be effective when it becomes law. The remainder of the act would be effective October 1, 2019, and apply to proceedings initiated on or after that date.