



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

2017-2018 General Assembly

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<b>Committee:</b>		<b>Date:</b>	July 12, 2018
<b>Introduced by:</b>		<b>Prepared by:</b>	Jason Moran-Bates Staff Attorney
<b>Analysis of:</b>	S.L. 2018-33		

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**OVERVIEW:** *S.L. 2018-33 makes 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.*

*Section (c1) of G.S. 122C-55, as amended, Section 44, Section 45.(a), and Section 45.(b) of this act became effective June 22, 2018. The remainder of the act will be effective October 1, 2019, and apply to proceedings initiated on or after that date.*

## **BILL ANALYSIS:**

**Section 1** amends 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** amends 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** makes conforming changes to G.S. 122C-55.

**Section 4** amends 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** adds definitions for "facility," "area facility," and "secretary" to G.S. 122C-55. It also adds 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** adds 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** amends 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** amends 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 is 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 are required to participate in creating the plan, and the LME/MCOs are able to invite community partners and other stakeholders in formulating the plan, which may address additional topics those stakeholders deem necessary.

**Section 9** amends 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.

**Section 10** amends 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** amends 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** amends G.S. 122C-211 to allow information in an advanced directive for mental health treatment to be reviewed at a first evaluation.

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

**Section 14** adds 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:
  - 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.

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

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

**Section 17** clarifies 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** amends 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** amends 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.

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** adds "commitment examiners" to G.S. 122C-253.

**Section 21** makes conforming changes to G.S. 122C-255.

**Section 22** amends 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.

**Section 23** amends 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** amends G.S. 122C-263 to:

- Establish a priority list of first exam sites and a process to follow if one is not available.

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- 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** amends 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** amends G.S. 122C-264 to replace references to "physician or eligible psychologist" with "commitment examiner."

**Section 27** amends G.S. 122C-265 to replace references to "physician or eligible psychologist" with "commitment examiner."

**Section 28** amends G.S. 122C-267 to replace references to "physician or eligible psychologist" with "commitment examiner."

**Section 29** amends 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 also establishes criteria for hearings to be held via teleconference.

**Section 30** amends 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.

**Section 31** makes a conforming change to G.S. 122C-276.

**Section 32** amends 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** amends G.S. 122C-282 to replace references to "physician or eligible psychologist" with "commitment examiner."

**Section 34** amends G.S. 122C-283 to:

- 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** amends 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.

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

**Section 37** amends 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** amends 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** makes conforming changes to G.S. 122C-290.

**Section 40** makes conforming changes to G.S. 122C-291.

**Section 41** makes conforming changes to G.S. 122C-292.

**Section 42** makes conforming changes to G.S. 122C-293.

**Section 43** requires 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 must be filed at least 10 days before the effective date of the changes.

**Section 44** requires 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** permits 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.

**EFFECTIVE DATE:** Section (c1) of G.S. 122C-55, as amended, Section 44, Section 45.(a), and Section 45.(b) of this act became effective June 22, 2018. The remainder of the act will be effective October 1, 2019, and apply to proceedings initiated on or after that date.