



Involuntary Commitment Law

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District Court Judges—Fall Conference
Wilmington, NC
October 2026**



School of
Government



Involuntary Commitment

- Procedure—The process for obtaining court-ordered treatment.
- Criteria—The grounds for court-ordered treatment.



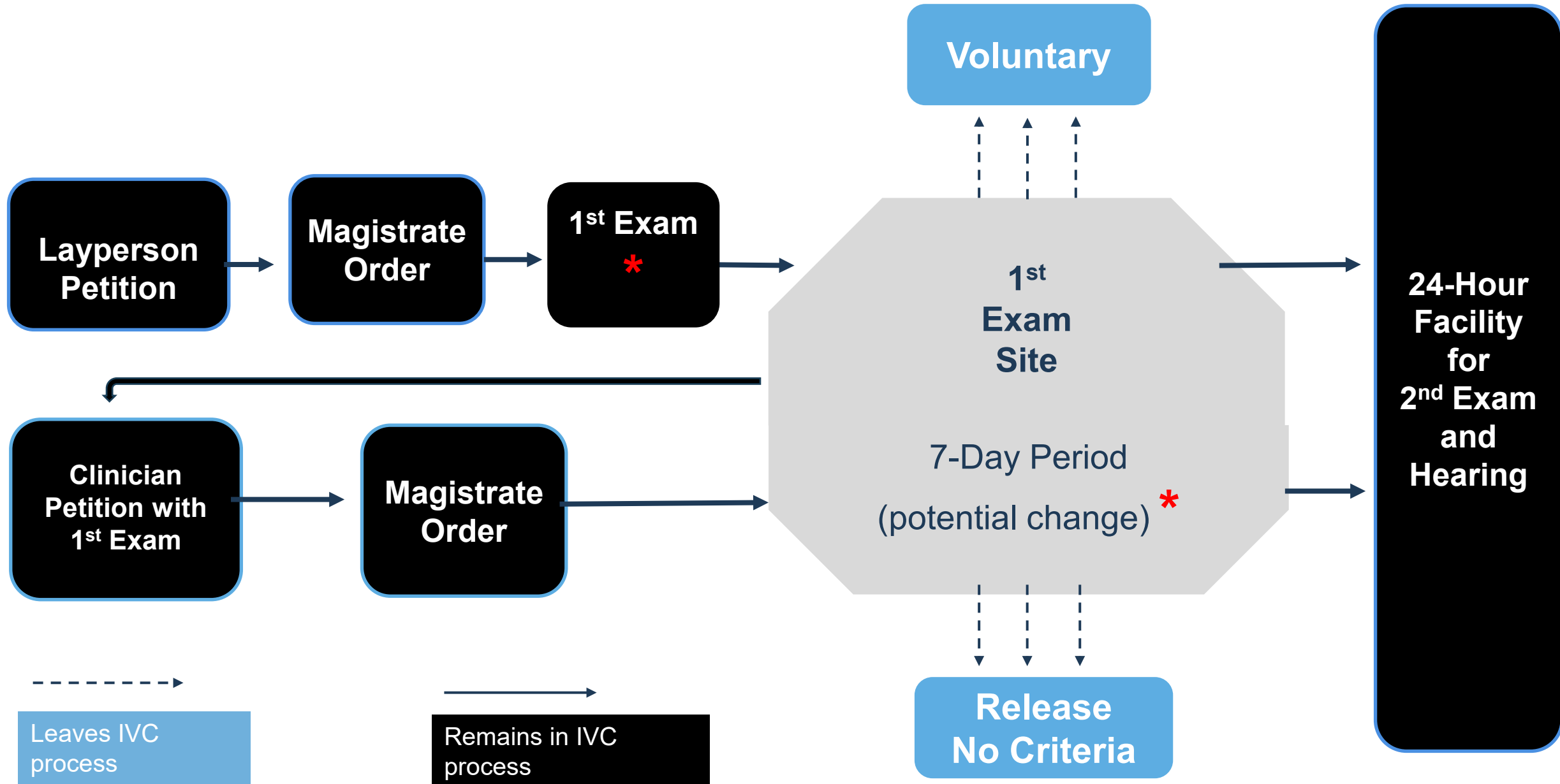


Focus for Today

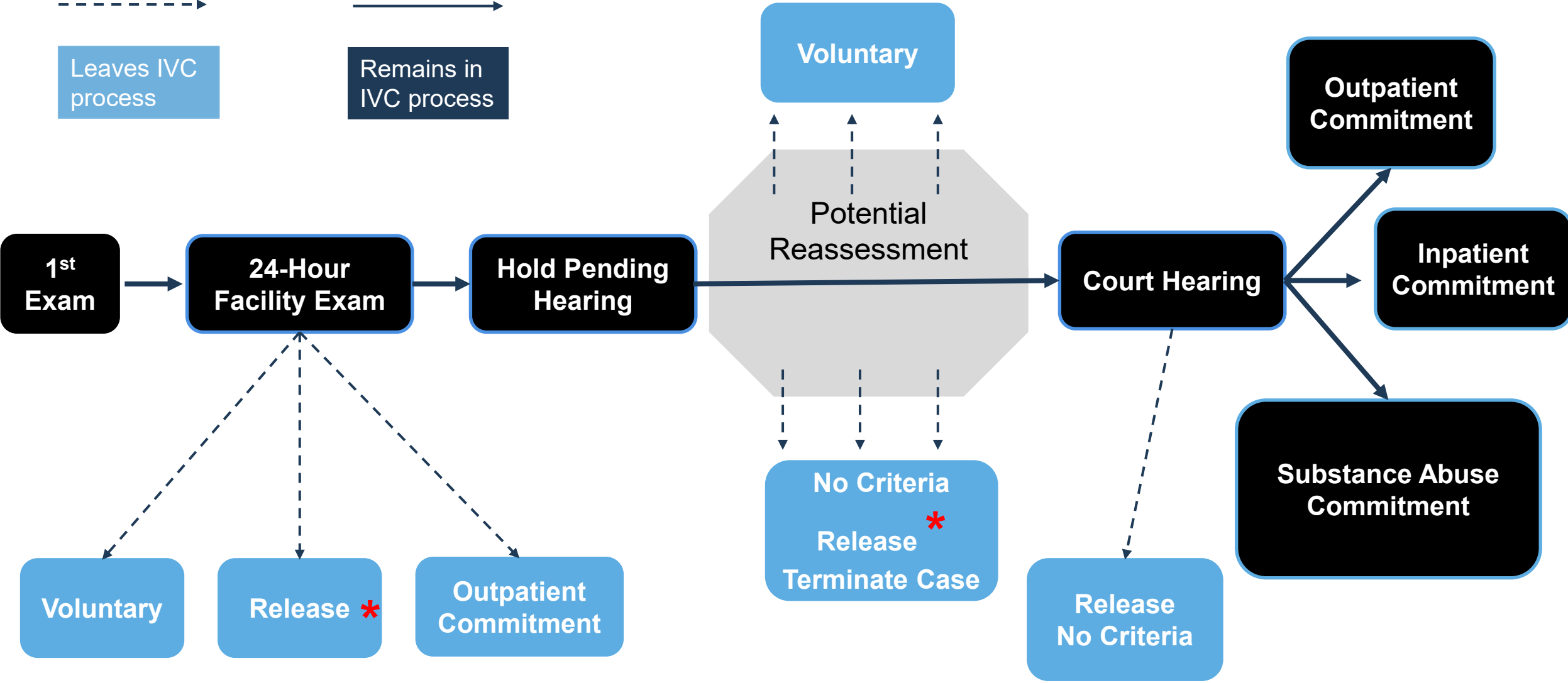
- ☐ Mapping the Process
- ☐ Terminations and Dismissals
- ☐ New Outpatient Commitment Law
- ☐ Case Law

*Note: The IVC portion of Iryna's law does not become effective until July 1, 2028.

NC Involuntary Commitment Process—Custody and 1st Examination



North Carolina Involuntary Commitment Process—24-Hour Facility





Clinician Finds Criteria No Longer Exist Before Hearing

After an involuntary commitment case has been calendared for a respondent held at a 24-hour facility, if the examining physician at the 24-hour facility determines, before the hearing, that the respondent no longer meets the criteria for commitment, must the judge sign an order of dismissal?



Respondent Signs in Voluntarily

In the same scenario, if instead of the commitment examiner finding no criteria for commitment, the patient decides to admit him or herself voluntarily, and the facility admits the patient on the basis of the patient's informed consent to treatment, must the judge sign an order dismissing the involuntary commitment case?

24-Hour Clinician Finds Criteria No Longer Exist While Respondent is Being Held Pending Hearing



“ . . . if *at any time pending the district court hearing*, the attending physician determines that the respondent no longer meets the criteria of either [outpatient or inpatient commitment], he shall release the respondent and notify the clerk of court and *the proceedings shall be terminated.*”

G.S. 122C-266(d)

[Note: does not apply to respondents charged with a violent offense and found incapable of proceeding]



Other Phases Where Clinician Finds Criteria Not Met

1. At the 1st examination site where respondent is presented under a custody order for examination, if the commitment examiner finds that the criteria for commitment do not exist, ***“the proceedings shall be terminated.”*** G.S. 122C-263(d)(3).
2. At the 1st exam site, “at any time during the respondent’s temporary detention” pending transport to a 24-hr facility, if the examiner finds that the respondent is no longer in need of inpatient commitment, ***“the proceedings shall be terminated.”*** G.S. 122C-263(d)(2).
3. At the 24-hr facility, if the 2nd examiner determines the criteria for inpatient or outpatient commitment are not met, “the physician shall release the respondent and ***“the proceedings shall be terminated.”*** G.S. 122C-266(a).



24-Hr Facility Finds Criteria No Longer Exist While Respondent is Being Held Pending Hearing

- There is no express statutory requirement that the district court judge enter an order of dismissal in this situation.
- It is not recognized as one of the dispositional alternatives in the disposition statute. G.S. 122C-271.
- Query: Are you being asked to sign orders of dismissal for cases where a respondent under an inpatient commitment order is determined, during the term of commitment, to no longer meet commitment criteria and, therefore, has been released from the facility? *See* G.S. 122C-277(a)



Reporting to the Court That Criteria No Longer Exist

- “The findings of the physician and the facts upon which they are based shall be in writing, in all cases.” G.S. 122C-266(c)
- Recommendation: The facility physician should notify the clerk using both the
 - 24-Hour Facility Exam for Involuntary Commitment (DMH 5-72-19-2),
and
 - Notice of Change in Commitment Recommendation (DMH 5-79-23A)



Respondent Signs in Voluntarily

- There is no statutory language that says, if a respondent being held under the commitment process decides to voluntarily admit, “the [IVC] proceedings shall be terminated.”
 - There is no statutory trigger of termination like when the physician finds criteria no longer exist.
- The Change of Commitment Recommendation form, the form presumably sent to the clerk if the IVC respondent decides to voluntarily admit, says:
 - ☐ The respondent or legally responsible person signed a consent for voluntary treatment on _____.



Respondent Signs in Voluntarily

Recommendation:

- Sign order of dismissal when IVC transitions to voluntary admission.
- Require the facility to file with the court the patient's or legally responsible person's signed application for admission.
 - That way there is documentary evidence in the IVC record to support your order of dismissal, something other than the bare assertion in the change of recommendation form.

New Outpatient Commitment Law





Modification to Outpatient Commitment (OPC) Law

- Session Law 2026-38, H 1104
- Effective December 1, 2026
- Changes criteria for outpatient commitment

December 1, 2026: New Outpatient Commitment Law (This shows the change from current criteria)



1. mental illness
2. reasonably determined to be capable of surviving safely in the community ~~with available supervision from family, friends or others,~~ without posing a danger to others, when engaged in treatment for mental illness
3. based their psychiatric history, in need of treatment to prevent further disability or deterioration that would predictably result in dangerousness
4. current mental illness limits or negates ability to make an informed decision to seek or comply with treatment voluntarily

December 1, 2026: New Outpatient Commitment Law (Previous slide + these are the new standard)



5. History of declining or nonadherence to prescribed treatment by a licensed treatment provider
6. Scheduled to be discharged from an inpatient hospital or released from a county jail or state prison.
7. One or more of the following in the relevant past:
 - a demonstrated history of prior violent convictions,
 - repeated violations of a civil protective order,
 - repeated incarcerations,
 - repeated involuntary inpatient psychiatric hospitalizations

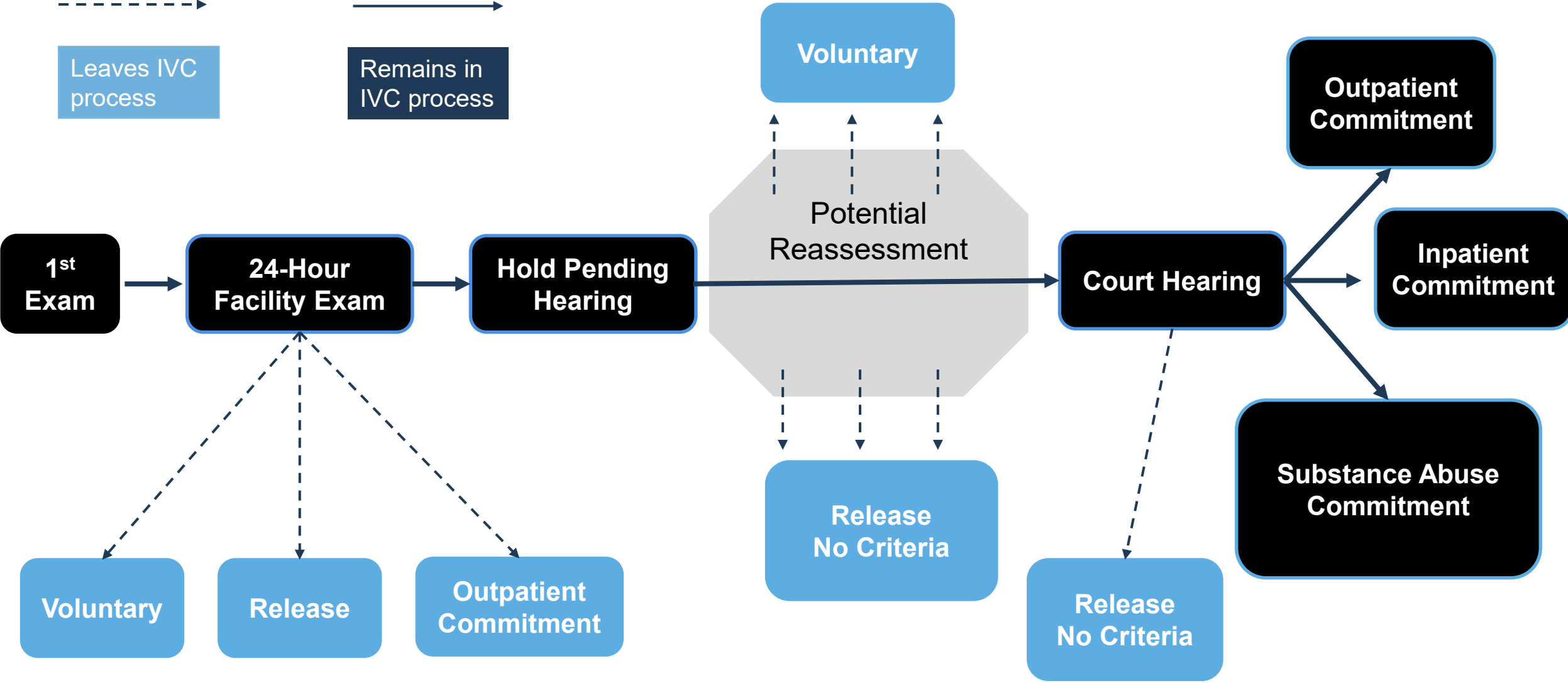


Narrowing of Target Population

Respondent is scheduled to be

- discharged from an inpatient hospital setting, or
- released from a county jail or state prison

North Carolina Involuntary Commitment Process—24-Hour Facility



New OPC Standard Applies to Defendants Found Incapable of Proceeding



- When a defendant is found to be *incapable of proceeding*, the presiding judge, upon such additional hearing, if any, as he determines to be necessary, *shall* determine whether the defendant meets the criteria for involuntary commitment under Part 7 of Article 5 of Chapter 122C of the General Statutes.
- If the judge determines defendant meets IVC criteria, he or she “*shall* make findings of fact and issue an order in the same manner, upon the same grounds and with the same effect as an order issued” by a magistrate pursuant to G.S. 122C-261. (Use AOC-SP-304B)

G.S. 15A-1003



Mateo Scenario

Read the case scenario (separate document)

Mateo is hospitalized again and is scheduled for discharge. He has a documented history of declining prescribed treatment.

Does Mateo meet the new outpatient commitment standard?





December 1, 2026: New Outpatient Commitment Law

1. Does Mateo have a mental illness?
2. Is he capable of surviving safely in the community without posing a danger to others when engaged in treatment for mental illness?
3. Based on his psych. history, is he in need of treatment to prevent further disability or deterioration that would likely result in dangerousness?
4. Does his mental status or illness limit or negate his ability to seek or comply with treatment voluntarily?
5. Does he have a history of declining/not adhering to prescribed treatment?
6. Has he had repeated involuntary inpatient psychiatric hospitalizations?
7. Is he scheduled to be discharged from an inpatient hospital or released from a jail or prison?



Existing Outpatient Commitment Law (Since 2019)

Before ordering outpatient commitment at the IVC hearing, the court shall:

- Make findings of fact as to the availability of outpatient treatment from an outpatient treatment provider who has agreed to accept the client
- Designate on the order the outpatient treatment provider responsible for managing the commitment
- Identify on the order the LME/MCO if the provider will be providing the treatment pursuant to a contract with an LME/MCO

New Outpatient Commitment Law (OPC) Requires a Treatment Plan



24-hour facility must prepare, in cooperation with outpatient treatment providers who will serve the respondent, a treatment plan that:

- Must be entered into evidence,
- Must be incorporated into the court order, and
- Includes, “at a minimum, the specific services to be provided, including medications as indicated, the recommended frequency of participation in services, the name of the provider who has agreed to provide the services, the arrangements made for the initial contact with the provider, and any other relevant information.”

See, G.S. 122C-265(c1), 122C-271(b)(1).



New Outpatient Commitment Law Requires Monitoring

- The court may order up to 180 days (was, 90) OPC.
- The order must:
 - state that the respondent is required to cooperate and comply with the treatment plan
 - include instructions to the responsible outpatient treatment provider and the LME/MCO, or alternative monitoring entity designated by DHHS], regarding their monitoring and supervision duties under G.S. 122C-273.
- G.S. 122C-273 provides:
 - When respondent “fails to comply or clearly refuses to comply,” monitoring entity must request a supplemental hearing
 - When respondent “fails to comply, but does not clearly refuse to comply,” monitoring entity may request supplemental hearing.



Supplemental Hearing for Noncompliance—Court May:

- Upon finding probable cause to believe the inpatient commitment (IPC) criteria are met, order an examination to determine necessity for OPC or IPC
- Reissue or change the OPC order
- Issue an order for inpatient commitment.
- A finding of noncompliance with an OPC order shall create a rebuttable presumption that the respondent is dangerous to self or others.

G.S. 122C-274

Appellate Review

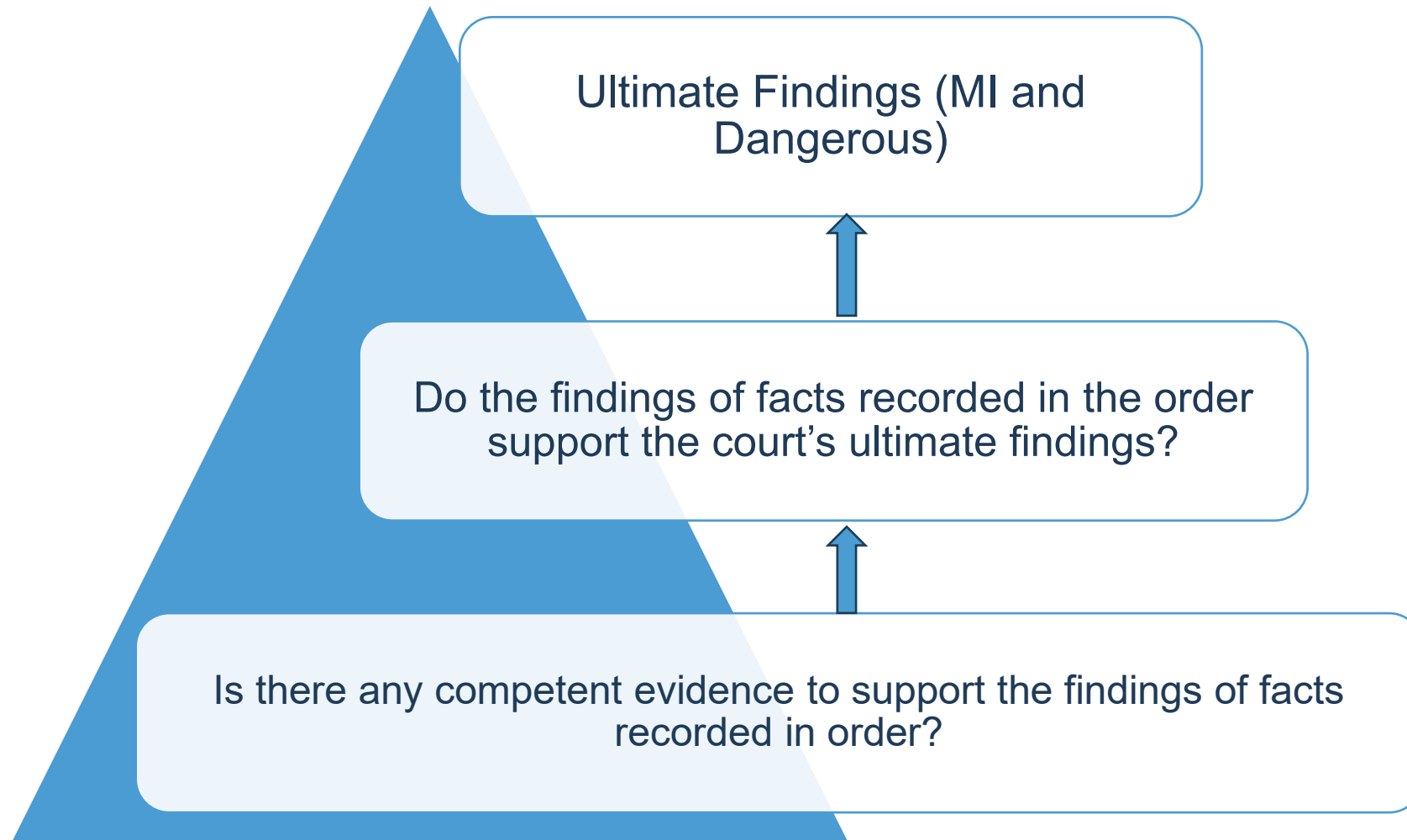




Appellate Review of District Court Order

“We review the trial court’s commitment order to determine whether the **ultimate finding** concerning the respondent’s danger to self or others is supported by the court’s **underlying findings**, and whether those underlying findings, in turn, are supported by competent **evidence**.” *In re W.R.D.*, 248 N.C. App. 512, 515, 790 S.E.2d 344, 347 (2016).

Appellate Review of District Court Order



Appellate and Trial Court Roles

The appellate court must

- “determine whether there was *any* competent evidence
- to support the ‘facts’ recorded in the commitment order, and
- whether the trial court's ultimate findings of mental illness and dangerous to self or others were supported by the ‘facts’ recorded in the order.” In re Collins, 49 N.C. App. 243, 246, 271 S.E.2d 72, 74 (1980).

The trial court *must record the facts that support its “ultimate findings”* (conclusions of law) that the respondent is mentally ill and dangerous to himself or others. See, G.S. 122C-268(j). In Re Booker, 193 N.C. App. 433, 436 (2008).



Dangerous to Self

Within the relevant past, the individual has:

1. Acted in a way to show unable to care for self + reasonable probability of serious physical debilitation in the near future unless adequate treatment is given
or
2. Attempted or threatened suicide + reasonable probability of suicide unless adequate treatment is given
or
3. Attempted or engaged in self-mutilation + reasonable probability of serious self-mutilation unless adequate treatment is given



Dangerous to Self—Lack of Self-Care Ability

A **two-prong test** that requires a finding of:

- a lack of self-care ability regarding one's daily affairs, and
- a probability of serious physical debilitation in the near future resulting from the more general finding of lack of self-caring ability.



Dangerous to Self

Within the relevant past, the individual has:

1. Acted in a way to show unable to care for self + reasonable probability of serious physical debilitation in the near future unless adequate treatment is given
or
2. Attempted or threatened suicide + reasonable probability of suicide unless adequate treatment is given
or
3. Attempted or engaged in self-mutilation + reasonable probability of serious self-mutilation unless adequate treatment is given



J.P.S., 264 N.C. App. at 62, 832 S.E.2d at 921

- A trial court's involuntary commitment of a person
 - cannot be based solely on findings of the individual's “history of mental illness or ... behavior *prior to and leading up to* the commitment hearing,”
 - but must include findings of “a reasonable probability” of some *future harm* absent treatment as required by [N.C. Gen. Stat. § 122C-3\(11\)\(a\)](#). [In re Whatley, 224 N.C. App. 267, 273, 736 S.E.2d 527, 531 \(2012\)](#).
- Any commitment order that fails to include such findings is “insufficient to support its conclusions that [the] [r]espondent presented a danger to [himself] and others.” [Id. at 274, 736 S.E.2d at 532](#).



No Finding of Future Harm

- While the findings “reflect[ed] [the] [r]espondent's mental illness, ... they d[id] not indicate that [the] [r]espondent's illness or any of her aforementioned symptoms [would] *persist and endanger her within the near future.*” [Whatley, at 273, 736 S.E.2d at 531](#)
- The trial court failed to make any finding that there was “a reasonable probability of [Respondent] suffering *serious physical debilitation within the near future* unless adequate treatment is given” or that there was “a reasonable probability of suicide unless adequate treatment is given.” [J.P.S., 264 N.C. App. 58, at 63, 823 S.E.2d 917, at 921 \(2019\)](#)



Sufficient Finding of Future Harm

- The trial court expressly found Respondent was *presently* unable to meet her health and housing needs, and when “taken together, poses a serious risk of rapid decompensation if in the community.”
- The finding that respondent is at “serious risk of *rapid* decompensation” satisfies [N.C. Gen. Stat. § 122C-3\(11\)\(a\)\(1\)\(II\)](#)’s requirement of a temporal finding of “reasonable possibility” of “serious physical debilitation *in the near future*.”

[*Matter of E.B. AAU/MPU Wards Granville County*](#), 287 N.C. App. 103, at 111-112, 882 S.E.2d 379 (2022).

Commitment Criteria

There is a reasonable probability of the individual suffering serious physical debilitation in the near future . . .

Previous episodes of dangerousness, when applicable, may be considered when determining reasonable probability of physical debilitation . . .

Criteria for Involuntary Commitment in North Carolina

Mental Illness (Adults)

an illness that so lessens the capacity of the individual to use self-control, judgment, and discretion in the conduct of his affairs and social relations as to make it necessary or advisable for him to be under treatment, care, supervision, guidance, or control.

Mental Illness (Minors)

a mental condition, other than mental retardation alone, that so impairs the youth's capacity to exercise age-adequate self-control or judgment in the conduct of his activities and social relationships that he is in need of treatment.

Substance abuse

the pathological use or abuse of alcohol or other drugs in a way or to a degree that produces an impairment in personal, social, or occupational functioning. Substance abuse may include a pattern of tolerance and withdrawal.

Dangerous to self

Within the relevant past, the individual has:

1. acted in such a way as to show that
 - a. he would be unable, 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; and
 - b. there is a reasonable probability of his suffering serious physical debilitation within the near future unless adequate treatment is given. Behavior that is grossly irrational, actions that the individual is unable to control, behavior that is grossly inappropriate to the situation, or other evidence of severely impaired insight and judgment creates an inference that the individual is unable to care for himself; or
2. attempted suicide or threatened suicide and there is a reasonable probability of suicide unless adequate treatment is given; or
3. mutilated himself or attempted to mutilate himself and there is a reasonable probability of serious self-mutilation unless adequate treatment is given.

Previous episodes of dangerousness to self, when applicable, may be considered when determining the reasonable probability of serious physical debilitation, suicide, or serious self-mutilation.

Dangerous to others

Within the relevant past the individual has:

1. inflicted, attempted to inflict, or threatened to inflict serious bodily harm on another and there is a reasonable probability that this conduct will be repeated, or
2. acted in a way that created a substantial risk of serious bodily harm to another and there is a reasonable probability that this conduct will be repeated, or
3. engaged in extreme destruction of property and there is a reasonable probability that this conduct will be repeated.

Previous episodes of dangerousness to others, when applicable, may be considered when determining the reasonable probability of future dangerous conduct. Clear, cogent, and convincing evidence that an individual has committed a homicide in the relevant past is evidence of dangerousness to others.



Summary of Appellate Review

1. Evidence ← ← ← Findings → → → Conclusion

You must record findings of fact that draw a nexus between the evidence and your conclusions of law

2. Each definition of dangerousness has two parts:

- Behavior and conditions leading up to and prior to hearing
- Reasonable probability of some future harm absent treatment

You must record findings of fact on **both** parts of the applicable definition of dangerousness (present and future looking parts)



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