

**House Select Committee on Involuntary
Commitment and Public Safety
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Involuntary Commitment

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Involuntary Commitment—Pathways

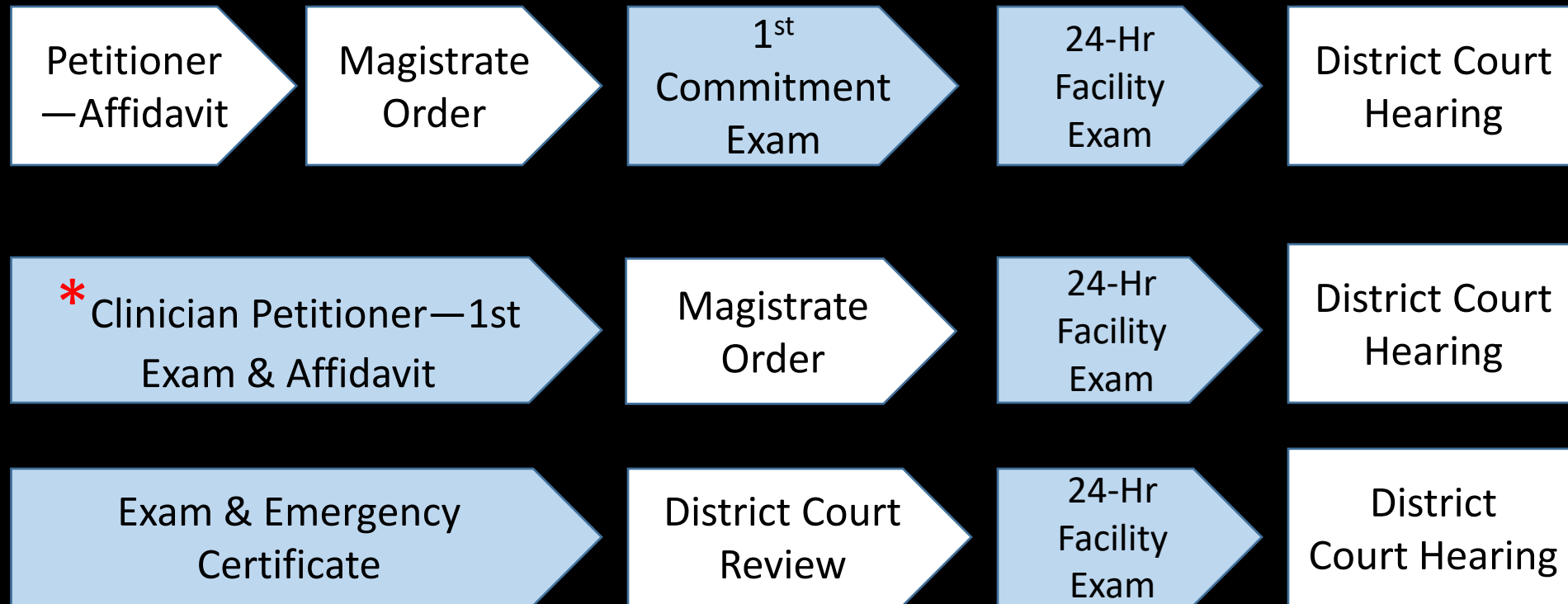
CIVIL PROCESS

- Layperson petition
- Clinician petition
- Emergency procedure

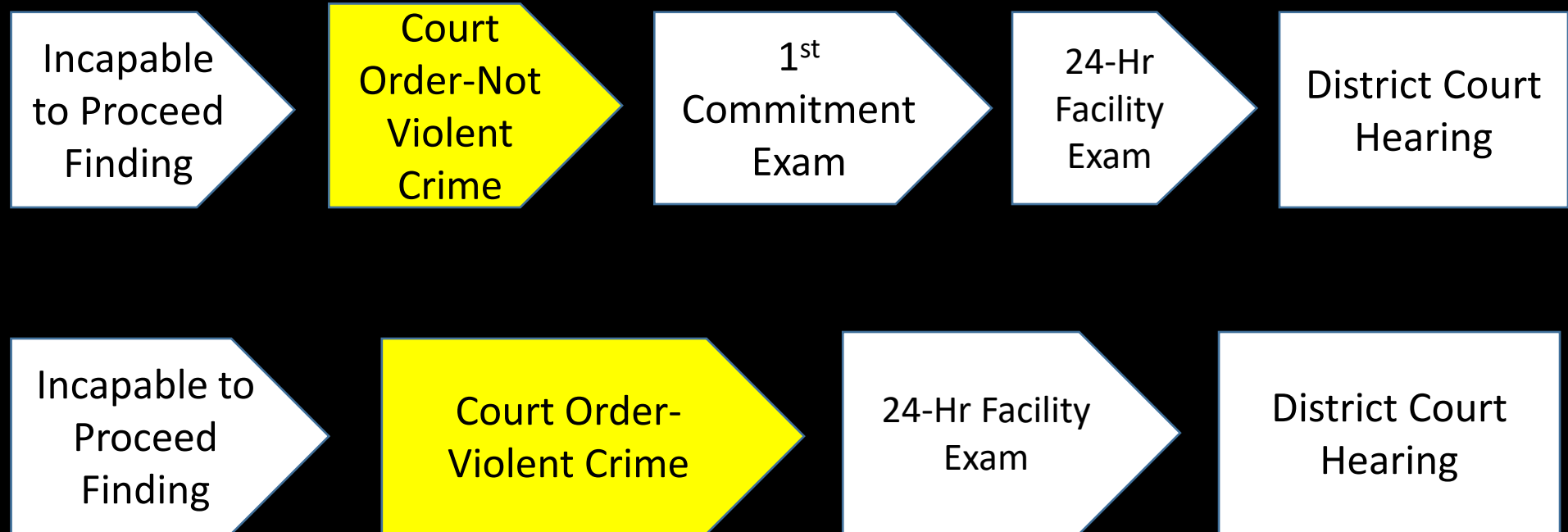
CRIMINAL JUSTICE REFERRAL

- Incapable to proceed defendants
- Iryna's law

Overview of Civil Commitment—Three Procedural Pathways



Overview of Commitment Procedure—For Incapable to Proceed Individuals



Involuntary Commitment

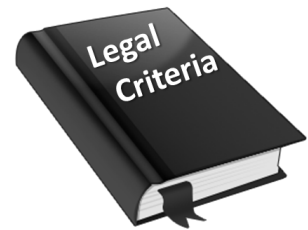
- Criteria—The grounds for court-ordered treatment.
- Procedure—The process for obtaining court-ordered treatment.



The Criteria for Commitment

1. **Inpatient commitment**—mentally ill + dangerous to self or others
2. **Substance abuse commitment**—substance abuser + dangerous to self or others
3. **Outpatient commitment**—mentally ill, in need of treatment to prevent disability or deterioration that would result in dangerousness, nature of illness limits the patient's ability to seek or comply with treatment voluntarily, and capable of surviving safely in the community with available supervision from family, friends, or others

1. mental illness
2. substance abuse
3. dangerous to self
4. dangerous to others



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.

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 Others

Within the relevant past, the individual has:

1. Inflicted, attempted, or threatened serious bodily harm + reasonable probability of conduct repeating
or
2. Created a substantial risk of serious bodily harm + reasonable probability of conduct repeating
or
3. Engaged in extreme destruction of property + reasonable probability of conduct repeating

Iryna's Law

Pre-Trial Release → IVC Exam

Effective Dec. 1, 2026, when setting conditions of pretrial release, the judicial official—in some circumstances—must order that the defendant receive an involuntary commitment examination.



Judicial Officer Orders an IVC Exam

IF CHARGED WITH A VIOLENT OFFENSE

And judicial officer determines the defendant has been subject to an “order of involuntary commitment” w/n prior 3 years

- “Order of involuntary commitment” means an involuntary commitment order issued by a district court judge

IF CHARGED WITH ANY OFFENSE

And judicial officer has reasonable grounds to believe the defendant is “dangerous to themselves or others.”

- Applies to any offense, whether violent or nonviolent.
- Applies whether or not there is prior IVC order

Category 1--Prior IVC order



- ❑ Through “a search of the court records for the defendant.”
- ❑ By December 1, 2026, the AOC shall “provide a method for judicial officials to determine if a defendant has a prior order of involuntary commitment. . . .”

Category 2--Reasonable Grounds to Believe the Defendant is Dangerous

☐ Requires

- the *knowledge of facts* that would
- lead a reasonable person of ordinary intelligence and prudence
- to believe the individual is “dangerous to self” or “dangerous to others”

☐ To form this belief, the judicial officer needs information



Source of Information



- Law enforcement officer “[m]ust inform any judicial official determining conditions of pre-trial release . . . of *any relevant behavior* of the defendant observed by the officer—prior to, during, or after the arrest—that may provide reasonable grounds for the judicial official *to believe the defendant is a dangerous to themselves or others.*”
- Defendant’s behavior and demeanor during pre-trial presence
- Criminal history report

The Order for IVC Examination

1. **Order** defendant to receive a commitment examination.
2. **Order** the arresting officer or officer of the arresting officer's agency to transport defendant to a hospital ED or other crisis facility that has a certified commitment examiner.
3. **Order** the commitment examiner, after performing the IVC exam, to either
 - Petition for involuntary commitment if there are grounds to do so, or
 - Provide written notice to the judicial official that entered the order for IVC exam that there the defendant does not meet the IVC criteria



Involuntary Commitment The Layperson Petition Process

The Petitioner

The individual who asks the magistrate—through the submission of a sworn affidavit—to commence the commitment process

- Anyone with knowledge may petition
- Petitioner must appear personally



The Respondent

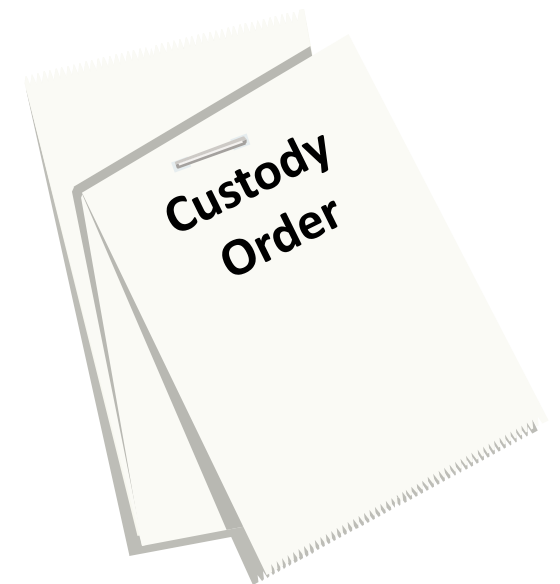
The individual who is the subject of the petition and—if the magistrate commences the commitment case—

- Will be examined by a commitment examiner
- Will have the opportunity to respond to the petitioner's allegations at a court hearing



The Magistrate

- Determines whether there are *reasonable grounds to believe* that
 - the facts alleged in the affidavit are true, and
 - the respondent probably meets the criteria for commitment
- Orders custody and evaluation of the respondent



Law Enforcement Officer or Designated Person



The magistrate shall issue the order to a

- law enforcement officer or
- other designated person

to take the respondent into custody for examination by a commitment examiner

- **Law-enforcement officer**—a sheriff, deputy sheriff, police officer, State highway patrolman.
- **Designated person**—a person designated in the transportation plan of a city or county, adopted under G.S. 122C-251(g), to provide a part or all the transportation and custody required by the involuntary commitment process.

Law Enforcement Officer

Upon receipt of the custody order, the law enforcement officer must take the respondent into custody within 24 hours after the order is signed



Without unnecessary delay, the officer must take the respondent to a commitment examiner for examination.

Commitment Examiner

Performs the **1st examination** to determine whether respondent meets the statutory criteria for commitment.

STATE OF NORTH CAROLINA
Department of Health and Human Services
Division of Mental Health, Developmental Disabilities, and Substance Abuse Services

FIRST EXAMINATION FOR INVOLUNTARY COMMITMENT

County _____
Client Record # _____
File # _____

Name of Respondent _____ DOB _____ Age _____ Sex _____ Race _____ M.S. _____
Address (Street or Box Number) _____ City _____ State _____ Zip _____ County _____ Phone _____

Legally Responsible Person or Next of Kin (Name) _____ Relationship _____
Address (Street or Box Number) _____ City _____ State _____ Zip _____ County _____ Phone _____

Petitioner (Name) _____ Relationship _____
Address (Street or Box Number) _____ City _____ State _____ Zip _____ County _____ Phone _____

EXAMINATION INFORMATION

The First Level examination and evaluation for the above-named respondent: _____

- A physician,
- A PhD psychologist with a health services provider certificate, or
- Any health or mental health professional who is **certified** under G.S. 122C-263.1 to perform the first examination for involuntary commitment

G.S. 122C-3(8a)

Hospital ED Role

Commitment Examination—Within 24 hours after respondent is presented

- Outpatient commitment
- Inpatient commitment
- Substance abuse commitment



Commitment Examiner Role— Findings and Recommendations

Findings

Result

Commitment criteria not found

→ Release

Outpatient commitment

→ Release
pending
hearing

Inpatient commitment →

Inpatient facility

Substance abuse commitment →

Release or
inpatient facility



Involuntary Commitment The Clinician Petition Process

Clinician Petition Procedure—Personal Appearance Not Required

If the petitioner

- Is a “commitment examiner” who
- Examines the respondent (physical face to face presence or via telemedicine equipment and procedures), and
- Signs the “Affidavit and Petition” before an official authorized to administer oaths (notary),

Then petitioner may file the examination and affidavit forms by delivering copies through the electronic filing system

Custody Order—> 24 hour Facility

The magistrate shall issue an order to

- a law enforcement officer or
- any other person authorized under G.S. 122C-251

To take the respondent into custody and transport to a 24-hour facility for custody, examination, and treatment pending hearing

The Seven Day Period

Steps Following First Exam—

If the commitment examiner recommends inpatient commitment,

The law enforcement officer or other designated person must transport the respondent to a 24-hour facility for custody, examination and treatment pending hearing.

G.S. 122C-261(d)(4) and -263(d)(2).

However . . .

If a 24-hour facility is not

- Immediately available or
- Medically appropriate

Then the respondent may be temporarily detained under appropriate supervision at the site of first examination.

Seven Day Limit

- Seven days after issuance of custody order, commitment must be terminated if 24-hour facility still not available or medically appropriate
 - Physician must report to clerk of court
 - Proceedings must be terminated
- New commitment proceedings may be initiated
 - Requires *new* petition
 - Requires *new* examination if petitioner is clinician
 - Requires *new* custody order

Change in Respondent's Status

1. If at any time a commitment examiner determines respondent no longer meets the inpatient criteria:
 - Respondent must be released (proceedings terminated), or
 - Physician may recommend outpatient commitment
2. Decision to release or recommend outpatient commitment must be
 - Made in writing (conduct exam and use exam form), and
 - Reported to the clerk of superior court by most reliable and expeditious means

The Emergency Procedure

Criteria for Emergency Commitment—Mental Illness

Mentally ill + Dangerous

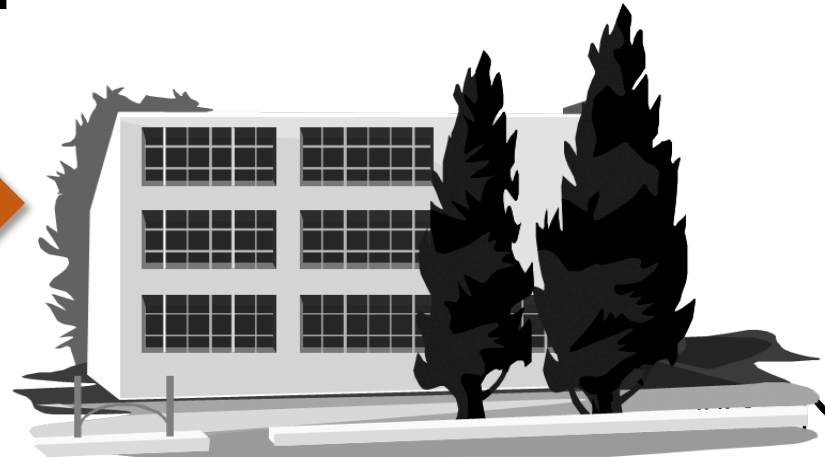
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Requires immediate hospitalization to prevent
harm to self or others

Transportation and Custody



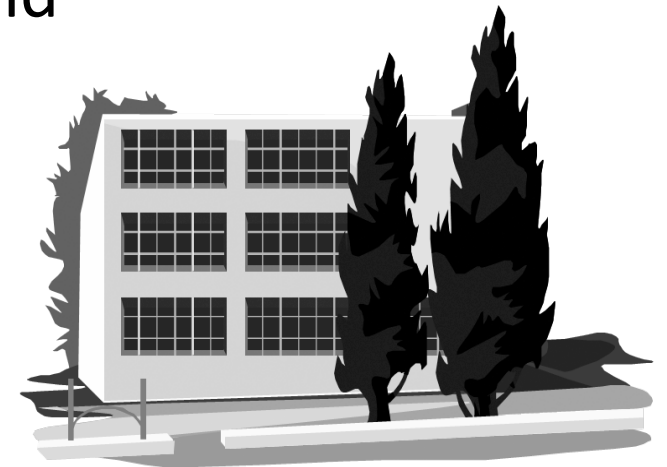
- Magistrate is not involved
- No custody order needed



The 24-Hour Facility

24-Hour Facility for IVC

- Treatment for mental illness or substance abuse in a structured living environment for a period of 24 consecutive hours or more.
- Performs the **second** commitment examination.
- Where respondent is held pending **hearing**.
- Must be **designated** by NC DHHS for the custody and treatment of involuntary clients.



Second Examination at 24-Hour Facility-

G.S. 122C-266

1. Examination

- Within 24 hours of presentation
- By a physician (or qualified professional for SA commit)

2. Recommendation

- Inpatient → hold and treat pending hearing
- Outpatient → release
- Substance abuse → hold and treat or designate other treatment pending hearing
- Criteria not met → release

The Clerk of Superior Court

- Receives the findings and recommendations of commitment examiners
- Receives law enforcement officer's copy of the custody order w/ completed return of service
- Maintains the court record containing the petition, custody order, and commitment examination forms
- Calendars the case for a hearing
- Appoints an attorney to represent the respondent

Duties of Clerk of Superior Court

- Upon receipt of an examiner's findings that R meets criteria for outpatient commitment, calendar hearing and notify respondent, proposed outpatient provider, and petitioner.
 - Upon receipt of examiner's findings that R meets criteria for inpatient commitment, assign counsel, calendar a hearing, and notify respondent, his or her counsel, and petitioner.
- ❖ There is no provision for notifying the respondent's LRP

Release and Discharge

- At any time before the hearing, if the attending physician determines that the respondent no longer meets the criteria for commitment
 - the physician shall release the respondent and notify the clerk of court who must terminate the proceedings
- Exceptions for insanity acquittees and criminal defendants charged with violent conduct

Hearing

- Within 10 days of the day the respondent is taken into custody
- The respondent shall be represented by counsel
- With the consent of the court, counsel may in writing waive the presence of the respondent.

The District Court Judge

Orders commitment of the respondent if there is clear, cogent, and convincing evidence that the respondent meets the criteria for commitment



Disposition

- **Outpatient commitment**—If the respondent meets outpatient commitment criteria, the court may order outpatient commitment for up to 90 days
- **Inpatient commitment**—If the respondent meets inpatient commitment criteria, the court may order commitment for up to 90 days.
- **Discharge**—If the court does not find that the respondent meets either of the commitment criteria for inpatient or outpatient commitment, the respondent shall be discharged.

Incapable to Proceed Defendants

Incapacity to Proceed Standard

- “[W]hen by reason of *mental illness or defect* he is unable to understand the nature and object of the proceedings against him, to comprehend his own situation in reference to the proceedings, or to assist in his defense in a rational or reasonable manner.” G.S. 15A-1001.

Mental Illness

Mental Defect

- S.L. 2023-114 (1/1/2025): . . . by reason of mental disorder, *intellectual disability*, neurological disorder, traumatic or acquired brain injury, or developmental immaturity . . .

G.S. 15A-1003

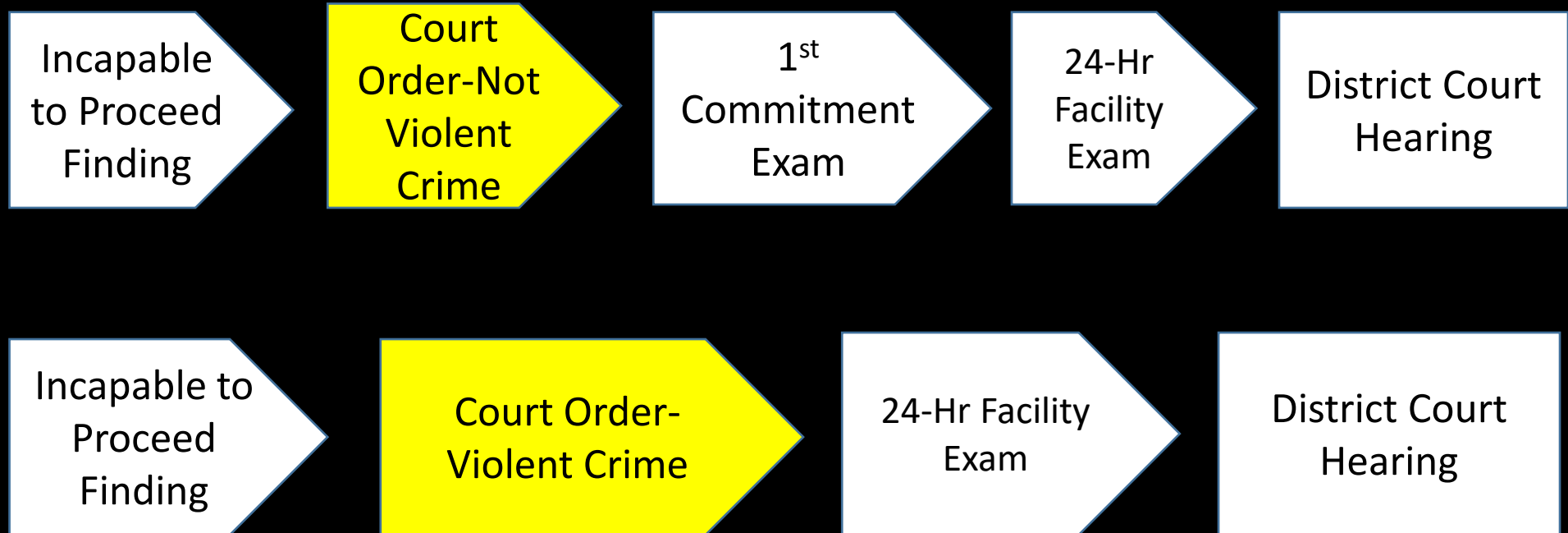
When a defendant is found to be *incapable of proceeding*,

- The presiding judge . . . *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 . . . 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.

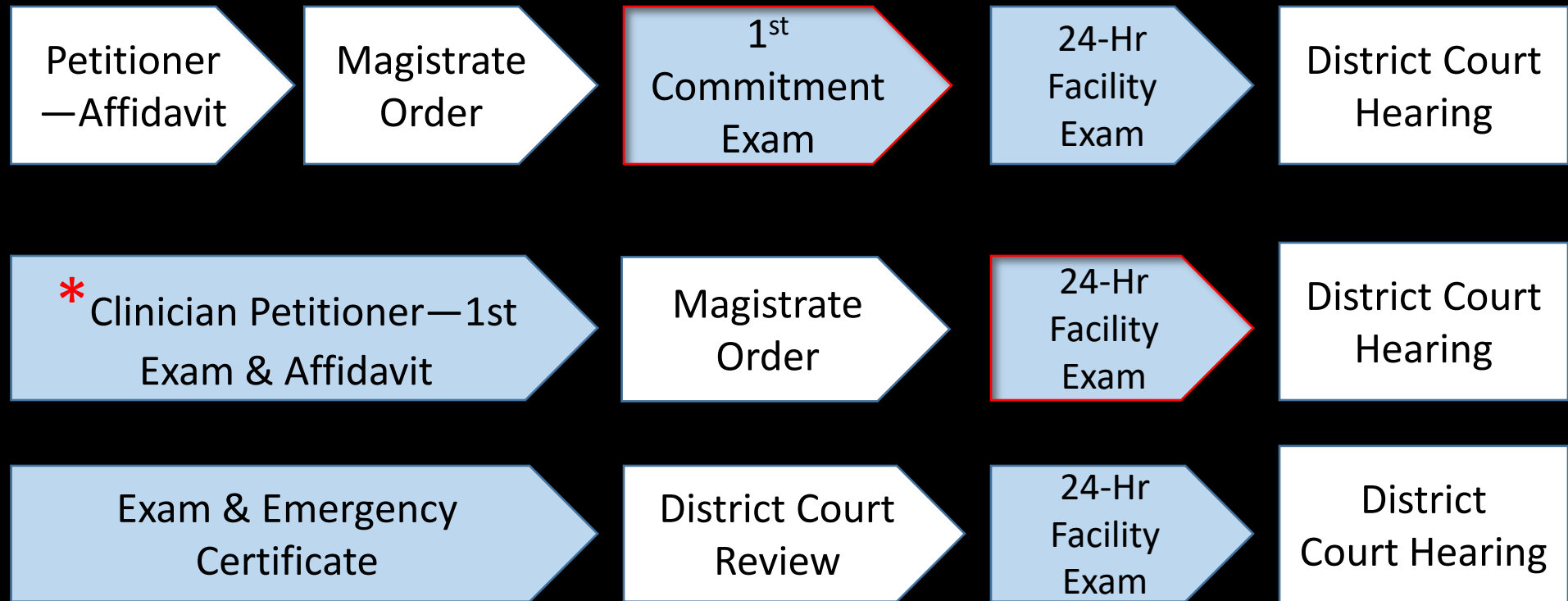
If Order Issued (AOC-SP-304B)

- Proceedings thereafter are in accordance with Part 7 of Article 5 of Chapter 122C of the General Statutes
- If the defendant was charged with a violent crime, including a crime involving assault with a deadly weapon,
 - the judge's custody order shall require a law enforcement officer to take the defendant directly to a 24-hour facility described in G.S. 122C-252, and
 - defendant cannot be released thereafter from IVC without an IVC court hearing.

Overview of Commitment Procedure—For Incapable to Proceed Individuals



Overview of Civil Commitment—Three Procedural Pathways



Contact and Resources

- Mark Botts
 - 919.923.3229 mobile
 - botts@sog.unc.edu
- Online Commitment Law Training
 - <https://www.sog.unc.edu/resources/microsites/mental-health>
 - [Involuntary Commitment Law--Online Training Program](#)
 - [Part 1-Commitment Criteria](#)
 - [Part 2-Commitment Procedure](#)

Questions

