**3.3 Waiver of Hearing**
A. Restrictions on Waiver
B. Effect of Waiver

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### A. Restrictions on Waiver

Some statutory safeguards exist to protect against early, uncounseled waivers of probable cause hearings. A defendant represented by counsel, or who desires to be represented by counsel, may not waive a probable cause hearing before the scheduled hearing date without the written consent of the defendant and counsel. *See* G.S. 15A-606(a).

### B. Effect of Waiver

**Bindover.** Upon waiver of a probable cause hearing, the district court must bind the defendant over to superior court for further proceedings. *See* G.S. 15A-606(c). The State still must seek an indictment after bindover unless the defendant consents to a bill of information—an indictment or bill of information is required to confer jurisdiction on the superior court. *See* G.S. 15A-627(a) (requiring indictment after bindover); G.S. 15A-923(a) (allowing bill of information only on waiver of indictment).

**Discovery deadlines.** Waiver of the probable cause hearing triggers the deadlines for requesting statutory discovery. (A request for voluntary discovery is ordinarily a prerequisite to a later motion to compel statutory discovery. *See infra* § 4.2D, Requests for Discovery (Apr. 2021)). A defendant represented by counsel before waiver of the probable cause hearing has ten working days after waiver to request voluntary discovery. *See* G.S. 15A-902(d). If a represented defendant is indicted or consents to a bill of information before a probable cause hearing is held or waived, the ten working days runs from notice of the indictment or consent to the information. *Id*.

***Practice note:*** Because the deadlines for requesting statutory discovery are relatively early, counsel should set up a system for automatically generating and serving statutory discovery requests in every case. Constitutional discovery, while not subject to the timeline for statutory discovery, may and should be requested within requests for statutory discovery.

**Other effects.** The waiver of a probable cause hearing is not admissible in evidence. *See* G.S. 15A-606(b); *see also State v. Hairston*, 280 N.C. 220, 227 (1972) ("The preliminary hearing may be waived [under prior G.S. 15-85], in which case the defendant is bound over to the superior court to await grand jury action without forfeiting any right or defense available to him.").