3.6 Disposition after Hearing
A. Probable Cause as to Felony
B. Probable Cause as to Misdemeanor
C. No Probable Cause
D. Review of Pretrial Release Conditions
E. Testing for Sexually Transmitted Diseases

3.6 Disposition after Hearing

A. Probable Cause as to Felony

If the district court judge finds probable cause as charged, or probable cause of a lesser offense within the original jurisdiction of the superior court, the judge must bind the defendant over to superior court. *See* G.S. 15A-612(a)(1). After bindover, the State still must seek an indictment of the defendant unless the defendant consents to the filing of a bill of information. *See* G.S. 15A-627(a); G.S. 15A-923(a). A finding of probable cause without an indictment or bill of information is not sufficient to confer jurisdiction on the superior court.

If the defendant is represented by counsel and probable cause is found as to a felony, the defendant has ten working days after the hearing to request voluntary statutory discovery. *See* G.S. 15A-902(d).

B. Probable Cause as to Misdemeanor

If the judge finds no probable cause as to the offense charged, but probable cause of a lesser-included misdemeanor, the judge may:

- set the case for trial in district court for between five and fifteen working days after the probable cause hearing (G.S. 15A-612(a)(2); G.S. 15A-613);
- accept a plea of guilty or no contest if the prosecutor consents (G.S. 15A-613); or
- proceed to try the misdemeanor immediately if both the prosecutor and defendant consent (G.S. 15A-613).

In the absence of a new pleading, the judge may not set the case for trial on an offense that is not a lesser-included offense of the charged offense. *See* G.S. 15A-612(a)(2). The prosecutor may prepare a statement of charges to charge a misdemeanor that is not a lesser-included offense of the charged offense. *See* G.S. 15A-922(a). The defendant ordinarily is entitled to three working days to prepare a defense following the filing of a statement of charges. G.S. 15A-922(b)(2).

C. No Probable Cause

If the judge finds no probable cause for the charged offense or any lesser-included offense, the judge must dismiss the case. *See* G.S. 15A-612(a)(3). Dismissal does not bar reinitiation of the prosecution. *See* G.S. 15A-612(b). Although not a common practice, the State may seek and obtain an indictment if it disagrees with the district court's probable cause decision. *See State v. Cradle*, 281 N.C. 198, 204 (1972). The State also may start the case again in district court through the issuance of a warrant or other process, although the commentary to G.S. 15A-612(b) suggests that the State should have new evidence before doing so.

D. Review of Pretrial Release Conditions

If the judge binds the case over to superior court or calendars the case for trial in district court, he or she must review the defendant's eligibility for pretrial release. *See* G.S. 15A-614. This is a helpful provision to have on hand because the State may argue, erroneously, that the district court no longer has jurisdiction and therefore cannot modify bond once it has found probable cause.

E. Testing for Sexually Transmitted Diseases

After a finding of probable cause for certain sex offenses, the victim, parent, or guardian of a minor victim may request that the defendant be tested for sexually transmitted diseases. *See* G.S. 15A-615(a). The results of these tests are not admissible in any criminal proceeding. *See* G.S. 15A-615(c). The defendant already may have been required to undergo tests for AIDS or Hepatitis B if a person was exposed, through nonsexual contact, to transmission by the defendant. *See* G.S. 15A-534.3 (authorizing detention of defendant for such tests at time of initial or first appearance).