

## 8.12 Termination of Commitment

***Defendant not charged with a violent crime.*** A committed respondent who was not charged with a violent crime, who was found incapable of proceeding, and who no longer meets the involuntary commitment criteria may be released without a separate hearing on the issue of release. G.S. 122C-277(a). Any conditions of release imposed by order of the criminal court continue to apply. These may include bail or placing the defendant in the custody of a designated person or organization. G.S. 15A-1004(b). If the criminal court order does not specify to whom the defendant is to be released, the facility may release the defendant “to whomever it thinks appropriate.” G.S. 15A-1004(c).

The facility must report “to the clerk if the defendant is to be released from the custody of the hospital or institution.” G.S. 15A-1004(c).

***Defendant charged with a violent crime and found incapable of proceeding.*** A committed respondent charged with a violent crime and found incapable of proceeding may not be released without an order of the district court. The attending physician must notify the clerk in the county where the facility is located fifteen days before the proposed discharge or release. The clerk must schedule a district court hearing, which is in effect a rehearing. G.S. 122C-277(b); *see infra* Appendix A, Form DMH 5-76-01.

The dispositional criteria for an initial hearing on involuntary commitment apply. *See supra* § 2.7. At the hearing on release, however, the attending physician would presumably testify that either the respondent is no longer mentally ill or is no longer dangerous to self or others. Counsel for the respondent should subpoena the attending physician if necessary.

Counsel, along with the respondent, will have to decide if the respondent will testify. The court may be less likely to order discharge without the testimony of the respondent. The respondent’s testimony and presentation could either jeopardize or enhance the chances for release.

If the respondent is released from involuntary commitment, the respondent may be released only to the custody of the law enforcement agency specified in the criminal court order originally referring the defendant for involuntary commitment. G.S. 15A-1004(c).