

8.6 Referral of Defendant for Civil Commitment Proceedings

A. Determination by Criminal Court

After finding the defendant incapable of proceeding, the court must determine whether the defendant meets the criteria for involuntary commitment under Chapter 122C. The presiding judge has discretion to hold a hearing on the commitment issue but is not required to do so. If “reasonable grounds to believe” that the criteria for involuntary commitment exist, the presiding judge must make findings of fact and issue a custody order. The custody order has the same effect as the custody order issued by the clerk or magistrate after the filing of a petition for involuntary commitment. G.S. 15A-1003(a); *see supra* § 2.3B. The custody order of the criminal court must specify that the clerk shall be notified if the defendant is to be released from the custodial facility. G.S. 15A-1004(c); *see infra* Appendix A, Form AOC-SP-304.

Upon entry of the custody order, the defendant becomes a respondent in the involuntary commitment proceeding, as well as being a defendant in the criminal case until the charges are dismissed.

Defendant charged with violent crime. If the defendant was charged with a violent crime, the custody order issued by the presiding judge must order a law enforcement officer to take the defendant directly to a 24-hour facility. The order must state that the defendant was charged with a violent crime and was found incapable of proceeding. G.S. 15A-1003(a). The order must also provide that the facility may release the defendant only to the custody of a specified law enforcement agency. G.S. 15A-1004(c); *see* Appendix A, Form AOC-SP-304.

Temporary detention of defendant pending involuntary commitment proceedings. The court may enter “appropriate orders for the temporary detention of the defendant” pending the involuntary commitment proceeding. G.S. 15A-1003(b).

B. Law Enforcement Officer to Assume Custody or to Transport

The law enforcement officer designated by the custody order of the court must take the respondent into custody within twenty-four hours of entry of the order. G.S. 122C-261(e).

If the defendant was charged with a violent crime and found incapable of proceeding, the law enforcement officer must take the respondent directly to a 24-hour facility. G.S. 122C-263(b). Otherwise, the usual procedures of Chapter 122C apply (G.S. 15A-1003(a)), and the respondent is transported for an examination by a physician or eligible psychologist. *See supra* § 2.3D and E.

C. First Examination Requirements

Defendant not charged with a violent crime and found incapable of proceeding. The

procedures and standards applicable to respondents initially taken into custody under Chapter 122C for a first examination apply. G.S. 15A-1003(a); *see supra* § 2.3E, F, and H.

The criminal court judge may enter an order specifying conditions of the defendant's release if outpatient commitment is recommended or if no grounds for commitment are found. The order may include any of the conditions of Article 26 of the Criminal Procedure Act (Chapter 15A of the North Carolina General Statutes), entitled "Bail," including designating an individual or organization to assume custody and supervision of the defendant if released. G.S. 15A-1004(b).

Defendant charged with a violent crime and found incapable of proceeding. The procedures and standards applicable to respondents initially taken into custody under Chapter 122C apply (G.S. 15A-1003(a)), with the following exceptions:

- The initial examination takes place at the 24-hour facility. G.S. 122C-263(b).
- The examining physician may not release the respondent until ordered to do so by the district court judge presiding over the involuntary commitment proceedings. *Compare* G.S. 122C-266(a) (2), (3) (permitting release by physician in other instances).

See supra § 2.3E.

D. Second Examination by Physician

Defendant not charged with a violent crime and found incapable of proceeding. If the first examiner finds that the criteria for involuntary commitment exist, the procedures and standards applicable to respondents initially taken into custody under Chapter 122C apply. G.S. 15A-1003(a). A second examination must then be performed. G.S. 122C-266(a); *see supra* § 2.3I.

A physician must perform the second examination. If the physician finds after the second examination that the criteria for involuntary commitment exist, the respondent must be held at the facility pending the district court hearing on involuntary commitment. G.S. 122C-266(a)(1).

If the second examiner does not find that the criteria for involuntary commitment exist, the respondent must be released. G.S. 122C-266(a)(3). The release is subject, however, to conditions that may be imposed by order of the criminal court. These may include bail or placing the defendant in the custody of a designated person or organization. G.S. 15A-1004(b).

Defendant charged with a violent crime and found incapable of proceeding. The statute provides for an examination by a physician of a respondent charged with a violent crime and found incapable of proceeding under the standards and procedures applicable to respondents initially taken into custody under Chapter 122C. G.S. 15A-1003(a), 122C-263(b), 122C-266(a); *see also supra* § 2.3I. However, there is only one examination, at

the 24-hour facility, and the examiner may not release the respondent pending the district court hearing, even if the criteria for involuntary commitment no longer exist. G.S. 122C-266(b).