

## 8.9 Hearings

### A. Time Limit for Hearing

The involuntary commitment hearing in district court must be held within ten days of the date of the custody order issued by the criminal court. G.S. 122C-268(a), 122C-261(e).

### B. Venue and Change of Venue

**Defendant not charged with a violent crime.** The hearing is held in the county where the facility is located. The statute provides further that the respondent may object to venue, and the hearing is then held in the county where the petition was initiated. G.S. 122C-269(a).

**Defendant charged with a violent crime.** Venue is in the county where the facility is located, unless a motion to change venue is filed. The statute provides that upon motion of “any interested person,” the proceeding may be moved to the county where the respondent was found incapable of proceeding “when the convenience of witnesses and the ends of justice would be promoted by the change.” G.S. 122C-269(c). It appears that both the State and the respondent could move for change of venue under this provision.

If venue is transferred back to the county where the defendant was found incapable of proceeding, the rules of Chapter 122C regarding place of hearing apply. The hearing is not to be held in a regular courtroom if the respondent objects, “if in the discretion of a judge a more suitable place is available.” G.S. 122C-268(g).

### C. Continuances

The standards and procedures applicable to routine involuntary commitment proceedings apply. *See supra* § 2.6E.

### D. Discharge Pending Hearing

**Defendant not charged with a violent crime.** A respondent who was not charged with a violent crime may be released at any time pending the district court hearing if the criteria for involuntary commitment no longer exist. G.S. 122C-266(d). 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.** A respondent who was charged with a violent crime may not be released pending the district court hearing. The respondent may be released only if so ordered by the district court following the hearing. G.S. 122C-266(b).

### **E. Not Contesting/Not Resisting**

Although not specifically provided by statute, a respondent may choose to “not contest” or may be “not resisting” because unable to comprehend and participate in the proceedings. For a discussion of the factors involved in making these determinations, see *supra* § 2.6F.

### **F. Waiver of Appearance**

The respondent’s presence may be waived by counsel with the permission of the court as in any other involuntary commitment hearing. G.S. 122C-268(e). For a discussion of the issues involved in waiving the respondent’s appearance, see *supra* § 2.6G. *See also infra* Appendix B, “Waiver of Appearance and Order Allowing Waiver of Appearance.”

### **G. Criteria for Involuntary Commitment**

The criteria for involuntary commitment are the same as for respondents not referred through the criminal justice system. *See supra* § 2.6H.

### **H. Evidence**

The evidentiary standards and burden of proof are the same as for respondents not referred through the criminal justice system. *See supra* § 2.6J.

*Note:* Chapter 15A provides that “[e]vidence used at the hearing with regard to capacity to proceed is admissible in the involuntary civil commitment proceedings.” G.S. 15A-1003(c).