

§ 122C-268.1. Inpatient commitment; hearing following automatic commitment.

(a) A respondent who is committed pursuant to G.S. 15A-1321 shall be provided a hearing, unless waived, before the expiration of 50 days from the date of his commitment.

(b) The district attorney in the county in which the respondent was found not guilty by reason of insanity may represent the State's interest at the hearing, rehearings, and supplemental rehearings. Notwithstanding the provisions of G.S. 122C-269, if the district attorney elects to represent the State's interest, upon motion of the district attorney, the venue for the hearing, rehearings, and supplemental rehearings shall be the county in which the respondent was found not guilty by reason of insanity. If the district attorney declines to represent the State's interest, then the representation shall be determined as follows. An attorney, who is a member of the staff of the Attorney General assigned to one of the State's facilities for the mentally ill or the psychiatric service of the University of North Carolina Hospitals at Chapel Hill, may represent the State's interest at commitment hearings, rehearings, and supplemental hearings. Alternatively, the Attorney General may, in his discretion, designate an attorney who is a member of his staff to represent the State's interest at any commitment hearing, rehearing, or supplemental hearing.

(c) The clerk shall give notice of the time and place of the hearing as provided in G.S. 122C-264(d1).

(d) The respondent shall be represented by counsel of his choice, or if he is indigent within the meaning of G.S. 7A-450 or refuses to retain counsel if financially able to do so, he shall be represented by counsel appointed in accordance with rules adopted by the Office of Indigent Defense Services.

(e) With the consent of the court, counsel may in writing waive the presence of the respondent.

(f) Certified copies of reports and findings of physicians and psychologists and previous and current medical records are admissible in evidence, but the respondent's right to confront and cross-examine witnesses may not be denied.

(g) The hearing shall take place in the trial division in which the original trial was held. The hearing shall be open to the public. For purposes of this subsection, "trial division" means either the superior court division or the district court division of the General Court of Justice.

(h) A copy of all documents admitted into evidence and a transcript of the proceedings shall be furnished to the respondent on request by the clerk upon the direction of the presiding judge. If the respondent is indigent, the copies shall be provided at State expense.

(i) The respondent shall bear the burden to prove by a preponderance of the evidence that he (i) no longer has a mental illness as defined in G.S. 122C-3(21), or (ii) is no longer dangerous to others as defined in G.S. 122C-3(11)b. If the court is so satisfied, then the court shall order the respondent discharged and released. If the court finds that the respondent has not met his burden of proof, then the court shall order that inpatient commitment continue at a 24-hour facility designated pursuant to G.S. 122C-252 for a period not to exceed 90 days. The court shall make a written record of the facts that support its findings.

(j) Nothing in this section shall limit the respondent's right to habeas corpus relief. (1991, c. 37, s. 2; 1991 (Reg. Sess., 1992), c. 1034, ss. 2, 3; 1995, c. 140, s. 1; 2000-144, s. 40.)