

The Indictment Process and Juvenile Transfer

The capacity to transfer a juvenile matter to superior court as a result of the return of an indictment was added to the Juvenile Code as part of the law changes that raised the age of juvenile court jurisdiction. [S.L. 2017-57 §16D.4.\(e\)](#) as amended by [S.L. 2019-186 §8.a](#). Never before had the indictment process been connected to delinquency matters in juvenile court. This new structure requires a finding in the juvenile matter after an indictment has been returned. It raises a range of questions about procedure and confidentiality. This post will review when indictment can be used to trigger the transfer process, highlight what is known and not known about the procedure that must accompany the new use of indictment in delinquency matters, and address the question of confidentiality of an indictment that is used to form the basis of a judicial finding in juvenile court.

When Indictment Triggers Juvenile Transfer

The new [G.S. 7B-2200.5\(a\)\(1\)](#) provides that all Class A – Class G felonies alleged to have been committed by a juvenile at age 16 or 17 **must** be transferred to superior court for trial as an adult after “[n]otice to the juvenile and a finding by the court that a bill of indictment has been returned against the juvenile charging the commission of an offense that constitutes a Class A, B1, B2, C, D, E, F, or G felony if committed by an adult.”

This one sentence constitutes the entirety of the new law that specifically addresses the use of the indictment process to trigger juvenile transfer. The language provided makes a few key requirements clear:

1. Indictment only triggers transfer on Class A – Class G felonies alleged to have been committed at ages 16 and 17. I refer to these as “qualifying indictments” for the rest of this post.
2. The district court must make a finding in the juvenile matter that a qualifying indictment has been returned.
3. Transfer to superior court happens only after the juvenile has been provided notice and the district court makes the finding that a qualifying indictment has been returned.
4. Nothing more than notice and a finding of the return of a qualifying indictment is required before transfer. In fact, transfer must occur once notice is provided and the finding is made.

How Does an Indictment Come to District Court?

Pursuant to [G.S. 15A-621](#), the grand jury is a body “impaneled by a superior court and constituting a part of such court.” According to [G.S. 15A-641\(a\)](#) an indictment “is a written accusation by a grand jury, filed with a superior court, charging a person with the commission of one or more criminal offenses.” Finally, [G.S. 15A-628\(c\)](#) requires that all bills of indictment submitted by the prosecutor to the grand jury be “returned by the foreman of the grand jury to the presiding judge in open court.”

None of the statutes governing the indictment process provide for a procedure to return an indictment to a juvenile proceeding in district court. As a part of superior court, the grand jury must return its indictments to the presiding judge—the superior court judge. There is no statute providing alternate procedures to either return a true bill of indictment to a juvenile matter or to provide the indictment to the district court in any other way.

However, the Juvenile Code now clearly requires that a qualifying true bill of indictment become part of the juvenile record in district court in order for the district court to make the findings necessary to order the required transfer of the juvenile proceeding. As part of the many form revisions completed by the Administrative Office of the Courts in response to raise the age, a new form was created for the district court to use when transferring a case to superior court based on a qualifying indictment. Form [AOC-J-444](#) is the form that district courts should be using when finding that a qualifying indictment has been returned and transferring the case to superior court. The district court should also use [AOC-CR-922](#), Release Order for Juvenile Transferred to Superior Court for Trial, to order conditions of pretrial release after the transfer is ordered.

While the forms needed to order a transfer based on an indictment are in place, the question of exactly how the indictment is supposed to reach district court remains. Under existing law, it appears that the indictment must first be returned to the presiding judge of superior court in the same way that all other indictments are returned. It also seems clear that the indictment must be made available to the district court in the juvenile proceeding before transfer as there is no superior court matter when the indictment is initially returned. The superior court matter only begins once the district court finds that a qualifying indictment has been returned and the matter is transferred to superior court. In the absence of a clear procedure, courts are creating their own processes for moving these indictments to district court.

Is the Indictment Confidential?

While grand jury proceedings are generally secret ([G.S. 15A-623\(e\)](#)), indictments are not usually considered confidential documents. The presiding judge (here again, a reference to the presiding superior court judge), can direct that a bill of indictment be sealed until the defendant is arrested or appears before the court. [G.S. 15A-623\(f\)](#).

At the same time, [G.S. 7B-3000](#) expressly provides that juvenile court records are not public records. Pursuant to this statute, the juvenile court record can be made available only to a short list of individuals (such as the juvenile and his or her attorney, the juvenile's parents, the prosecutor, and court counselors) absent a court order. The default legal status of an indictment is therefore the opposite of the default legal status of a juvenile court record—the indictment is public unless ordered sealed whereas the juvenile court record is confidential unless a court allows access through a court order.

This discrepancy raises the question of whether an indictment that must be part of the juvenile

record before becoming part of a superior court case is confidential during the period before transfer. The plain language of G.S. 7B-3000(b) states that “All juvenile records shall be withheld from public inspection, and except as provided in this subsection, may be examined only by order of the court.” None of the exceptions in the statute address the return of an indictment. With clear statutory language in place that does not allow for access to an indictment that is part of a juvenile record without a court order, it seems that any indictment that is part of the juvenile court record is confidential in exactly the same way that the rest of the juvenile court record is confidential.

G.S. 15A-623(f), which allows the superior court judge to seal an indictment, could be used to preserve the confidentiality of the indictment while it is part of the juvenile matter in district court. Under that statute, the presiding superior court judge has the authority to seal a bill of indictment until the defendant “appears before the court.” As discussed above, the court reference in this statute is the superior court. Therefore, it appears legally permissible for the superior court judge to seal a true bill of indictment that must be transmitted to a district court to trigger transfer of a juvenile matter until the case is transferred and the juvenile (now a defendant in a criminal proceeding) appears in superior court.

That same indictment is required for the superior court matter to proceed and therefore must also become part of the superior court record. Once the matter is in superior court it is governed by the criminal procedure act. The indictment will be unsealed once the youth appears in the superior court matter and will become public information in the same way that any other indictment in the criminal justice system is public information. At the end of all of this procedure, it seems the same indictment will be both part of a confidential juvenile court record and part of a public record in a criminal matter.

Key Takeaways

In thinking about the new use of a true bill of indictment to trigger transfer orders in juvenile proceedings, I am left with these key takeaways:

- In the absence of clear statutory procedure, courts need to develop a process to provide a true bill of indictment to district court,
- District courts should be using AOC-J-444 and AOC-CR-922 once a qualifying indictment is returned in a juvenile matter, and
- Indictments that must first become part of a juvenile proceeding should be sealed until the juvenile matter is transferred and the youth appears in superior court.