

## Appointment of Attorneys in Juvenile Transfer Cases

How does the appointment of counsel to represent juveniles with cases that are transferred to superior court for trial as adults work? This can be a confusing question to answer given that the legal authority for the appointment of counsel changes at the time of transfer, there are important immediate legal issues following transfer, and there are so many different ways in which indigent defense services are provided across North Carolina. This blog will (1) identify the law that governs appointment of counsel when cases are in juvenile court and following transfer, (2) share recently released guidance from the N.C. Office of Indigent Defense Services (IDS) regarding appointment of counsel in matters that are transferred, and (3) suggest a procedure that could be followed to ensure that the rights of juveniles regarding appeals of transfer orders and conditions of pretrial release are ensured.

### 1. Law that Governs Appointment of Counsel in Transfer Cases

#### *While the Case is Under Juvenile Jurisdiction*

[G.S. 7B-2000](#) provides that counsel for the juvenile must be appointed in any proceeding in which the juvenile is alleged to be delinquent unless counsel is retained for the juvenile. It also provides that all juveniles must be “conclusively presumed to be indigent” and eliminates the need for an affidavit of indigency from the juvenile.

Pursuant to [G.S. 7A-451\(b\)](#), “entitlement to the services of counsel begins as soon as feasible after the indigent is taken into custody or service is made upon him of the charge, petition, notice or other initiating process” and continues through “any critical stage of the action or proceeding.” Counsel for juveniles in delinquency proceedings are therefore appointed at the initiation of the delinquency matter.

#### *Following Transfer of the Matter to the Superior Court*

When a delinquency case is transferred to superior court it ceases to fall under the jurisdiction of the juvenile court. Therefore, the original appointment that was made pursuant to G.S. 7B-2000 no longer applies. The case becomes a criminal matter once transfer is ordered and the criminal law regarding the appointment of counsel now applies to the case.

Indigent criminal defendants accused of felony offenses are guaranteed the right to counsel. See *Gideon v. Wainwright*, 372 U.S. 335 (1963); *State v. Mays*, 14 N.C. App. 90 (1972). Because a juvenile matter can only be transferred to superior court if it includes a felony offense, every transferred case will fall under this guarantee.

Unlike delinquency proceedings, indigency must be shown in order to qualify for appointed counsel in criminal matters. Pursuant to [G.S. 7A-450\(a\)](#), a person is indigent when that person “is

financially unable to secure legal representation and to provide all other necessary expenses of representation in an action or proceeding enumerated in this Subchapter.” While it is difficult to imagine a circumstance in which a juvenile would not meet the requirements of this definition and it can be reasonably argued that the presumption of juvenile indigence may also apply in a criminal matter, indigency should be determined in order to appoint counsel once the case becomes a criminal matter.

The law discussed here addresses the appointment of counsel. It does not address the obligation of the attorney appointed in the juvenile matter to ensure that the juvenile’s right to appeal the issuance of the transfer order is preserved. [Rule 1.7](#) of the IDS Rules for the Continued Delivery of Services in Non-Capital Criminal and Non-Criminal Cases at the Trial Level obligates appointed counsel to represent their client through judgment at the trial level, to discuss the right to appeal with the client, and to either file notice of an appeal or represent the client until the time for providing notice of appeal expires. While this Rule is not directly applicable to delinquency proceedings, the attorney appointed in the delinquency proceeding may have an obligation to ensure that the juvenile’s right to appeal the transfer order is ensured. Attorneys may want to consider providing oral notice of appeal in court following transfer in order to meet any such obligation.

**Key takeaway:** A new appointment of counsel, made pursuant to the usual processes in criminal matters, must occur following transfer of the matter to Superior Court.

## 2. Recent IDS Guidance on Appointment of Counsel in Matters that are Transferred

IDS recently released a series of [Frequently Asked Questions](#) (FAQs) related the appointment of counsel, billing, and recoupment in juvenile delinquency cases that are transferred. The guidance provided by the FAQs is supplemental to existing IDS rules and local appointment plans. Several points emerge from the guidance, including that:

- Counsel should initially be appointed at the time the delinquency petition is filed. Counsel should be appointed again at the time an order of transfer is entered.
- Counsel appointed to represent the juvenile should be qualified for that representation. Counsel appointed in the delinquency matter should be qualified to represent youth in juvenile court and counsel appointed following transfer should be qualified “to represent an adult in the criminal division for the class of case which corresponds to the highest charge in the petition.”
- There are a wide range of ways that counties provide indigent defense representation in both the delinquency and criminal settings. This can include a public defender office, roster attorneys, adult defense contracts, and juvenile defense contracts. A locality may have one of these structures or it may blend one structure at the juvenile level and another at the criminal level. Whatever the locality has in place, the ideal situation is one in which the same, qualified attorney can be appointed to represent the juvenile both in delinquency

court and in superior court following transfer.

- If the usual provider of defense services is the public defender and the public defender has a conflict, the preferred option is to appoint an attorney who has a contract to provide juvenile defense and is qualified to represent an adult in the criminal division for the class of case which corresponds to the highest charge in the petition. If that is not possible, then an attorney who is on the juvenile list and who is qualified to represent an adult in the criminal division for the class of case which corresponds to the highest charge in the petition should be appointed.

The guidance provides specific guidance for appointment by county, depending on that county's structure for the provision of indigent defense services. It also provides detailed information about when to submit fee applications and eligibility for recoupment.

### 3. How to Ensure Uninterrupted Representation at Transfer

Access to counsel is a Sixth Amendment right afforded to defendants in criminal matters at every critical stage of the proceeding. [Indigent Defense Manual Series, Pretrial Vol. 1 12.4 B](#). The period immediately following transfer of the case to superior court is a particularly critical stage. Pursuant to [G.S. 7B-2603](#), "any order transferring jurisdiction of the district court in a juvenile matter to the superior court may be appealed to the superior court for a hearing on the record. Notice of the appeal must be given in open court or in writing within 10 days after entry of the order of transfer in district court." In addition, any confinement of the juvenile pending trial must occur pursuant to the criminal law that governs determination of conditions of pretrial release. The shift in legal framework may also give rise to critical bail and other release determinations soon after transfer.

The existing statutes do not explicitly address the appointment of counsel following transfer. However, given that the appointment of counsel must be done in accordance with the requirements of the criminal law once the case is transferred and the recent IDS guidance, addressing appointment of counsel at the time transfer is ordered is likely the most prudent course. There are currently two things that must be done at the time transfer is ordered. The district court judge must (1) sign the transfer order ([AOC-J-444](#), [AOC-J-343](#), or [AOC-J-442](#)) and (2) determine conditions of pretrial release ([AOC-CR-922](#)). The court could also address the appointment of counsel at this time.

The IDS guidance states that "[i]n the event the attorney appointed in the juvenile division will not continue to represent the juvenile in adult criminal court, an attorney qualified to do so should be appointed **immediately** after the court enters an order of transfer." (emphasis added). This language implies that the district court should be considering whether the attorney who was appointed to represent the juvenile while the case was under juvenile jurisdiction is qualified to continue to represent the juvenile in the superior court after the transfer order is signed. This immediate consideration of representation following transfer could be the key practice that ensures continuous representation of the juvenile following transfer of the proceeding.

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Questions about the IDS FAQs regarding appointment can be directed to Eric Zogry at [Eric.J.Zogry@nccourts.org](mailto:Eric.J.Zogry@nccourts.org). Questions regarding the payment information in the IDS guidance can be directed to Whitney Fairbanks at [Whitney.B.Fairbanks@nccourts.org](mailto:Whitney.B.Fairbanks@nccourts.org). I appreciate the collaboration of Eric and Whitney in the creation of this blog and the expert review provided by the SOG's own John Rubin.