

# Pre-Adjudication - Probable Cause and Transfer

Juvenile Delinquency: A Course for District Court Judges  
November 8, 2021

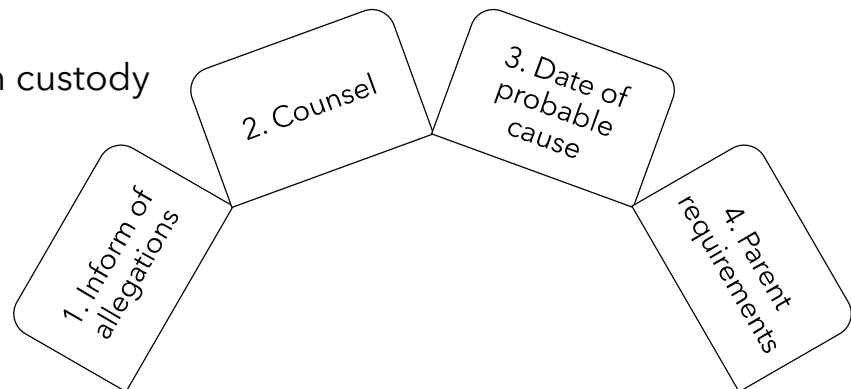


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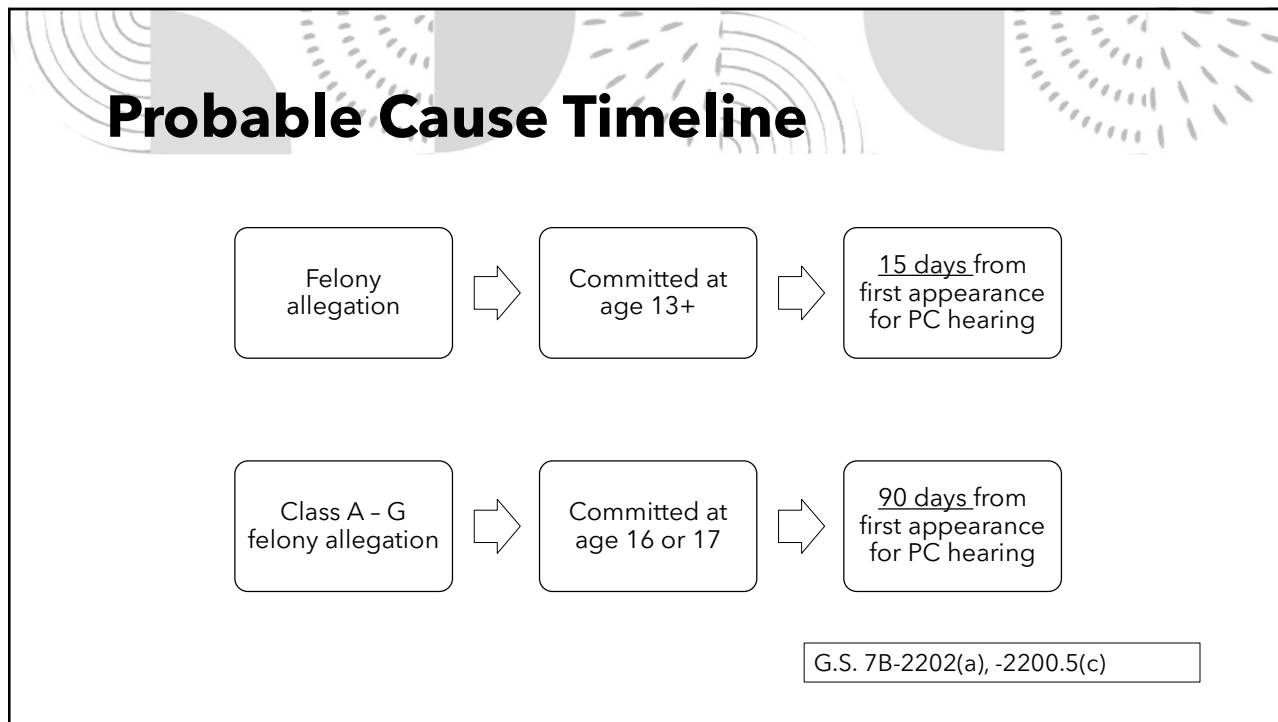
## First Appearance

G.S. 7B-1808

- Mandatory for all felonies, within 10 days of petition filing (or at custody hearing if in custody)
- Cannot continue if in custody



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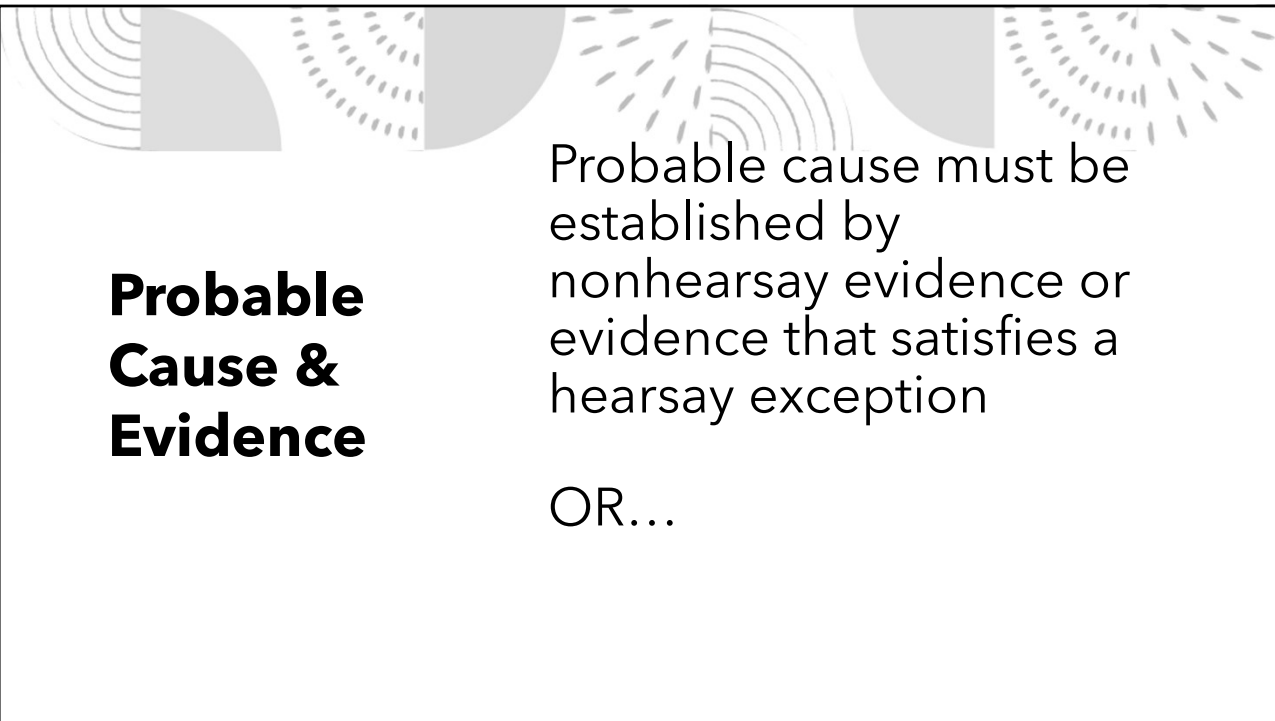
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## Probable Cause Hearing

- **Prosecutor must represent the State**
- **Juvenile must have counsel**
- **Juvenile may testify, call, and examine witnesses; may present evidence**
- **Each witness must testify under oath or affirmation and be subject to cross-examination**

**G.S. 7B-2202(b)**

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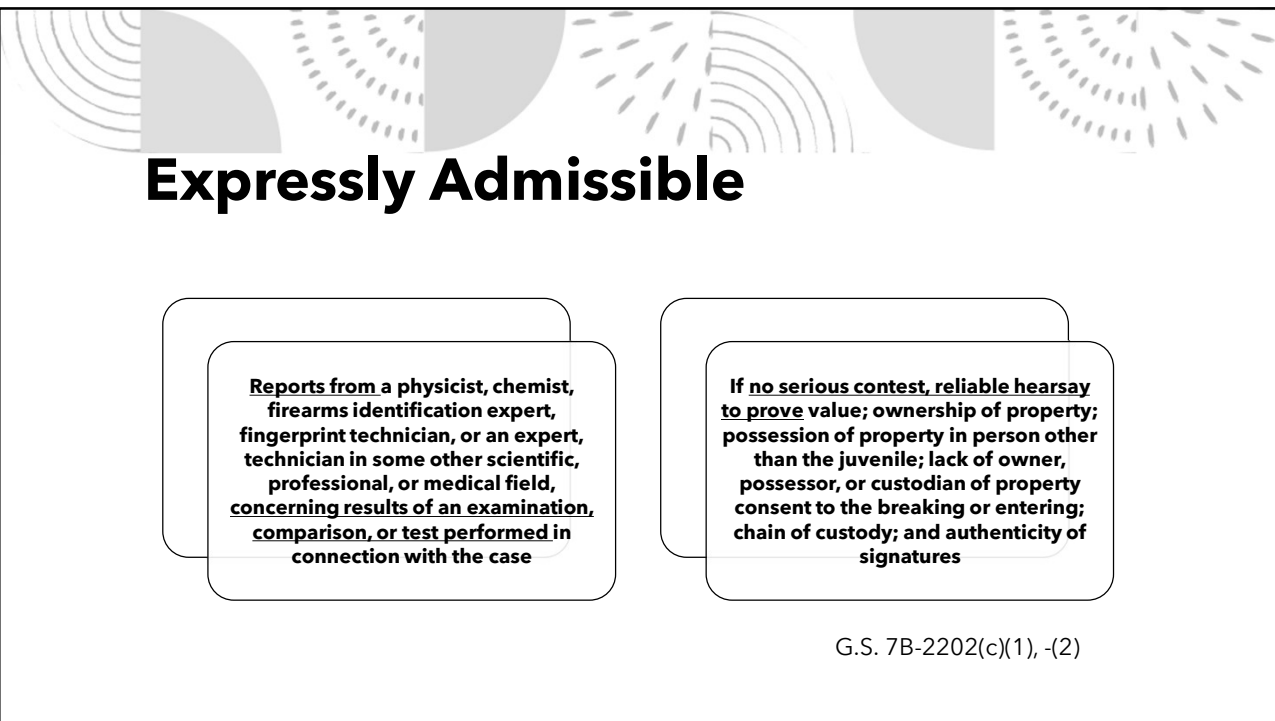


**Probable Cause & Evidence**

Probable cause must be established by nonhearsay evidence or evidence that satisfies a hearsay exception

OR...

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**Expressly Admissible**

**Reports from a physicist, chemist, firearms identification expert, fingerprint technician, or an expert, technician in some other scientific, professional, or medical field, concerning results of an examination, comparison, or test performed in connection with the case**

**If no serious contest, reliable hearsay to prove value; ownership of property; possession of property in person other than the juvenile; lack of owner, possessor, or custodian of property consent to the breaking or entering; chain of custody; and authenticity of signatures**

G.S. 7B-2202(c)(1), -(2)

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## What is "Reliable Hearsay"

**No definition of "reliable hearsay"; court determines credibility**

**Examples might include:**

- Kelly Blue Book report
- Sales receipt
- Hearsay testimony corroborated by other evidence

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Probable cause to believe that the offense charged has been committed and that the juvenile committed it  
G.S. 7B-2202(c)

## Determination at Probable Cause Hearing

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## No Felony Probable Cause

Dismissal

- Jeopardy has not attached

Probable cause on lesser included misdemeanor

- Proceed to adjudication on misdemeanor
- Adjudicatory hearing must be a separate hearing

G.S. 7B-2202(f)

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## Transfer

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## Transfer - Related Offenses

Jurisdiction over greater and lesser included and any offense based on same act or transaction, or series of a single scheme or plan, also transfer

G.S. 7B-2203(c)

Prosecutor can file indictments for related offenses after transfer, even if no petition was filed in juvenile court.

o *State v. Jackson*, 165 N.C. App. 763, 600 S.E.2d 16 (2004)

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**One transfer  
mechanism per case**



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## Mandatory Transfer

Class A Felony at 13,  
14, 15

- On finding of PC
- G.S. 7B-2200

Class A - C Felony at  
16, 17

- On finding of PC or finding that qualifying indictment returned
- G.S. 7B-2200.5(a)

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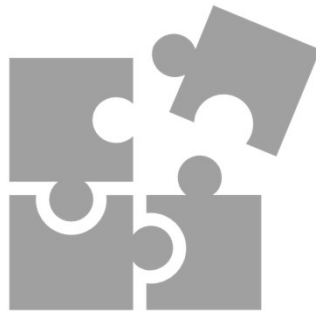
## Mandatory Transfer - Prosecutorial Discretion

Class D - G Felony at 16, 17

- On finding of PC or finding that qualifying indictment returned
- If prosecutor elects to transfer
- Prosecutor can transfer any time before adjudication
- G.S. 7B-2200.5(a), (a1)

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## Indictment



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## Statutory Language

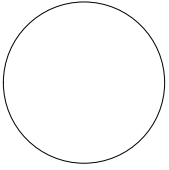
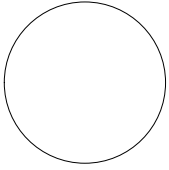
G.S. 7B-2200.5(a)(1)

**Notice** 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.

\* Must be alleged **at age 16 or 17**

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	<p>A complaint and petition must precede any finding that an indictment has been returned</p>		<p>Cases MUST begin in district court in order to be transferred</p>

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## Indictment Process

15A-621

A grand jury is a body...impaneled by a superior court and constituting part of such court.

15A-628(c)

Bills of indictment submitted by the prosecutor to the grand jury, whether found to be true bills or not, must be returned by the foreman of the grand jury to the presiding judge in open court.

15A-641(a)

Any 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

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**Confidentiality?**

Indictments must be returned in the juvenile matter for the finding needed to transfer the case

Not confidential in superior court

subject to juvenile confidentiality to the extent that it is part of the juvenile record

Every part of the juvenile court record is subject to the confidentiality provisions in G.S. 7B-3000  
 "any written motions, orders, or papers filed in the proceeding"

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## Discretionary Transfer

Class B1 - I Felony at 13, 14, 15 or Class H - I Felony at 16, 17

- Finding of PC
- Motion to transfer
- Transfer hearing
- G.S. 7B-2200, -2200.5(b)

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# Transfer Hearing

Juvenile entitled to 5-days notice

G.S. 7B-1807

<b>STATE OF NORTH CAROLINA</b>		NC-JOIN No. <span style="border-bottom: 1px solid black; display: inline-block; width: 50px;"></span>	File No. <span style="border-bottom: 1px solid black; display: inline-block; width: 50px;"></span>
County <span style="border-bottom: 1px solid black; display: inline-block; width: 100px;"></span>		In The General Court Of Justice District Court Division	
IN THE MATTER OF		NOTICE OF HEARING IN JUVENILE PROCEEDING (DELINQUENT)	
Name And Address Of Juvenile   		G.S. Ch. 7B, Subch. II: G.S. 7B-1807	
To The Juvenile And Each Of The Persons Named Below:			
Name And Address   		Name And Address   	
<input type="checkbox"/> Parent <input type="checkbox"/> Guardian <input type="checkbox"/> Custodian		<input type="checkbox"/> Parent <input type="checkbox"/> Guardian <input type="checkbox"/> Custodian	
Name And Address   		Name And Address   	
<input type="checkbox"/> Juvenile's Atty. <input type="checkbox"/> Other: (specify) _____		<input type="checkbox"/> Parent's Atty. <input type="checkbox"/> Other: (specify) _____	
A hearing will be held in this proceeding on the date and at the time and location shown below.			
Date Of Hearing <span style="border-bottom: 1px solid black; display: inline-block; width: 100px;"></span>	Time Of Hearing <input type="checkbox"/> AM <input type="checkbox"/> PM	Location Of Hearing <span style="border-bottom: 1px solid black; display: inline-block; width: 100px;"></span>	
The Nature Of The Hearing Is:			
<input type="checkbox"/> 1. Hearing on the need for continued secure custody. G.S. 7B-1906. <input type="checkbox"/> 2. Hearing on the need for continued nonsecure custody. G.S. 7B-1906. <input type="checkbox"/> 3. Adjudication hearing. G.S. 7B-2403 through -2411. <input type="checkbox"/> 4. Disposition hearing. G.S. 7B-2501. <input type="checkbox"/> 5. Hearing on a motion to modify or vacate a court order. G.S. 7B-2600. <input type="checkbox"/> 6. Hearing on the attached motion. <input type="checkbox"/> 7. First appearance. G.S. 7B-1808. <input type="checkbox"/> 8. Probable cause hearing. G.S. 7B-2202. <input type="checkbox"/> 9. Transfer hearing (Hearing to determine whether the juvenile's case should be transferred to Superior Court). G.S. 7B-2203. <input type="checkbox"/> 10. Probation review hearing (Hearing to review the juvenile's progress on probation). G.S. 7B-2510(d). <input type="checkbox"/> 11. Probation violation hearing (Hearing to determine whether the juvenile has violated conditions of probation). G.S. 7B-2510(e). <input type="checkbox"/> 12. Post-release supervision review hearing (Hearing to review the juvenile's progress on post-release supervision). G.S. 7B-2516. <input type="checkbox"/> 13. Post-release supervision violation hearing (Hearing to determine whether the juvenile has violated the conditions of post-release supervision). G.S. 7B-2516. <input type="checkbox"/> 14. Extended commitment hearing - beyond eighteenth birthday (Hearing to review the decision of the Juvenile Justice Section of the Division of Adult Correction and Juvenile Justice to extend the juvenile's commitment beyond the juvenile's eighteenth birthday).			

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# Transfer Hearing

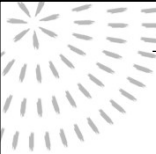
Prosecutor and juvenile may be heard and offer evidence (G.S. 7B-2203(a))


- No explicit statute or appellate law on whether rules of evidence apply
- Rules of evidence apply unless there is an explicit statutory exception or exception in the Rules (Rules 101, 1101(a)), (State v. Foster, 222 N.C. App. 199 (2012))

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<p><b>Transfer Determination</b></p>	<hr/> <p>Whether the protection of the public and the needs of the juvenile will be served by transfer</p> <hr/> <p>G.S. 7B-2203(b)</p>
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 <p>Factors that MUST be considered in determining transfer</p>	<hr/> <p>age</p> <hr/> <p>maturity</p> <hr/> <p>intellectual functioning</p> <hr/> <p>prior record</p> <hr/> <p>prior rehabilitation attempts</p> <hr/> <p>available juvenile facilities and programs and likelihood of benefit from treatment and rehabilitative efforts</p> <hr/> <p>whether alleged offense was committed in an aggressive, violent, premeditated, or willful manner</p> <hr/> <p>Seriousness of the offense and whether protection of the public requires adult prosecution</p>
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<h1>Transfer Order</h1>	Specify	<b>Order must specify reasons for transfer</b>
	DO NOT need	<b>DO NOT need findings of fact to support conclusion that needs of juvenile or protection of public would be served by transfer</b>
	DO NEED	<b>DO NEED to reflect that court considered all 8 factors</b>

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## If Transfer Ordered

**Must set conditions for pretrial release**  
(G.S. 7B-2204(a))

**Fingerprinting Required**  
(G.S. 7B-2201)

**Immediate appeal to Superior Court**  
(G.S. 7B-2603)

Also consider addressing counsel for the juvenile

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# Pretrial Release

Governed by G.S. 15A-533, -534

Release order must specify person to whom youth may be released (G.S. 7B-2204(a))

If detained, juvenile detention under 18, jail 18+ (G.S. 7B-2204(a), (c))

<https://benchbook.sog.unc.edu/criminal/pretrial-release>

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# AOC-CR-922

<b>STATE OF NORTH CAROLINA</b>		File No. _____
County _____		In The General Court Of Justice Superior Court Division
<b>STATE VERSUS</b>		<b>RELEASE ORDER FOR JUVENILE TRANSFERRED TO SUPERIOR COURT FOR TRIAL</b>
Name And Address Of Juvenile Defendant _____		G.S. 7B-2204, 15A-533, 15A-534
Date Of Birth _____	Age _____	Amount Of Bond \$ _____
File Number(s) And Offense(s) _____		
See Table Of Offenses on Side Two.		
Location Of Court _____	Court _____	Date _____ Time _____ <input type="checkbox"/> AM <input type="checkbox"/> PM
<p><b>To The Juvenile/Defendant Named Above:</b> you are ORDERED to appear before the Court as provided above and at all subsequent continued dates. If you fail to appear, you will be arrested and you may be charged with the crime of willful failure to appear. You also may be arrested without a warrant if you violate any condition of release in this Order or in any document incorporated by reference. The juvenile/defendant has been advised of the charge(s) against him/her and his/her right to communicate with counsel and friends.</p> <p>Your release to _____ is authorized upon execution of your:</p> <p><input type="checkbox"/> WRITTEN PROMISE to appear <input type="checkbox"/> UNSECURED BOND in the amount shown above</p> <p><input type="checkbox"/> CUSTODY RELEASE <input type="checkbox"/> SECURED BOND in the amount shown above</p> <p><input type="checkbox"/> HOUSE ARREST with ELECTRONIC MONITORING administered by agency _____ and the SECURED BOND above. You may leave your residence for the purpose(s) of <input type="checkbox"/> employment <input type="checkbox"/> counseling <input type="checkbox"/> course of study <input type="checkbox"/> vocational training</p> <p><input type="checkbox"/> Your release is not authorized.</p> <p><input type="checkbox"/> The juvenile/defendant is required to provide fingerprints under G.S. 7B-2201 and G.S. 15A-502(a1). Prior to release, the juvenile/defendant shall provide fingerprints.</p> <p><input type="checkbox"/> The juvenile/defendant is required to provide a DNA sample under G.S. 7B-2201 and G.S. 15A-266.3A. Prior to release, the juvenile/defendant shall provide a DNA sample.</p> <p><input type="checkbox"/> This Order is entered upon the juvenile/defendant's warrantless arrest for violation of conditions of release entered previously for the above-captioned case in the Order dated _____.</p> <p><input type="checkbox"/> The juvenile/defendant was arrested or surveilled after failing to appear as required under a prior release order.</p> <p><input type="checkbox"/> This was the juvenile/defendant's second or subsequent failure to appear in this case.</p> <p>Your release is subject to the conditions shown on the attached: <input type="checkbox"/> AOC-CR-630; <input type="checkbox"/> AOC-CR-631 <input type="checkbox"/> Other: _____</p>		
Date _____	Name Of Judicial Officer (type or print) _____	Signature Of Judicial Officer _____
<input type="checkbox"/> Magistrate <input type="checkbox"/> Deputy CJC <input type="checkbox"/> Assistant CJC <input type="checkbox"/> Clerk Of Superior Court <input type="checkbox"/> District Court Judge <input type="checkbox"/> Superior Court Judge		
<b>ORDER OF COMMITMENT</b>		
<p><b>To The Custodian Of The Juvenile Detention Facility Named Below:</b> You are ORDERED to receive in your custody the juvenile/defendant named above who may be released if authorized above. If not released, you are ORDERED to produce the juvenile/defendant in court as required and provide transportation to and from the juvenile detention facility. If the juvenile/defendant reaches the age of 18 while awaiting the completion of proceedings in superior court, you are ORDERED to transport the juvenile/defendant to the custody of the sheriff of the county where the charges arose.</p>		
<p><b>To the Sheriff of _____ County:</b> If the juvenile/defendant reaches the age of 18 years while awaiting the completion of proceedings in superior court, you are ORDERED to receive in your custody the juvenile/defendant who may be released if authorized above. If not released, you are ORDERED to produce the juvenile/defendant in court as required and provide transportation to and from the detention facility.</p>		
Name Of Juvenile Detention Facility _____ Date _____ Signature Of Juvenile Officer _____		
<b>WRITTEN PROMISE TO APPEAR OR CUSTODY RELEASE</b>		
I, the undersigned juvenile/defendant, promise to appear at all hearings, trials or otherwise as the Court may require and to abide by any restrictions set out above. I understand and agree that this promise is effective until the entry of judgment in Superior Court. If I am released to the custody of another person, I agree to be placed in that person's custody, and that person agrees by his/her signature to supervise me.		
Date _____	Signature Of Juvenile/Defendant _____	Signature Of Person Agreeing To Supervise Juvenile/Defendant _____
Name Of Person Agreeing To Supervise Juvenile/Defendant (type or print) _____		Address Of Person Agreeing To Supervise Juvenile/Defendant _____
<b>JUVENILE/DEFENDANT RELEASED ON BAIL</b>		
Date _____ Time _____	Name Of Detention Facility Officer (type or print) _____	Signature Of Detention Facility Officer _____
<input type="checkbox"/> AM <input type="checkbox"/> PM		
ORIGINAL (DW)		
AOC-CR-922, Rev. 2021 © 2021 Administrative Office of the Courts		

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<h2>Right to Appeal Transfer Decision</h2>	<p>To superior court for a hearing on the record</p> <p>Notice required in open court or in writing within 10 days after entry of the transfer order</p>
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## 10-Day Appeal Window


Dispelling Transfer Confusion: 10-Day Appeal Window, Orders for Arrest

<https://civil.sog.unc.edu/dispelling-transfer-confusion-10-day-appeal-window-orders-for-arrest/>

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<b>Key Points</b>	Criminal matter under jurisdiction of the superior court
	CRS numbers can and should be manually generated
	No orders for arrest based on returned indictment

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## Transfer Decision Appellate Review

Standard = **abuse of discretion** in the issue of transfer (no review on findings of probable cause allowed at this time)

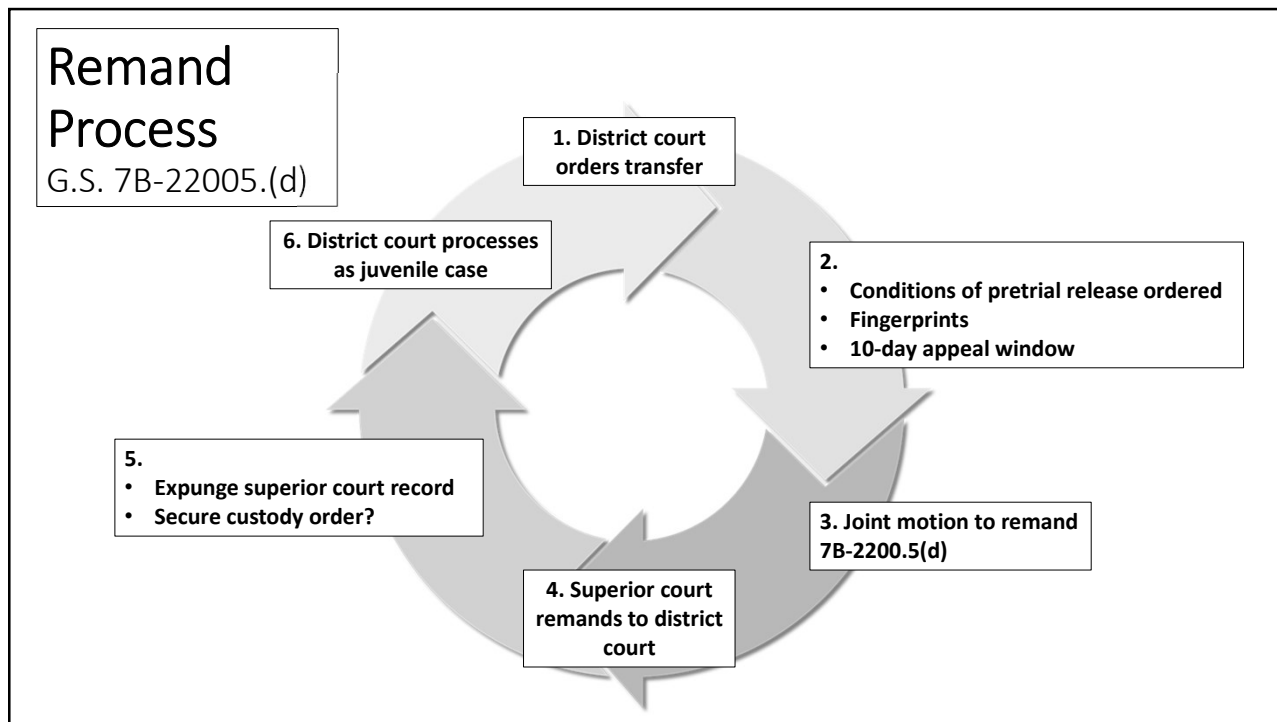
G.S. 7B-2603(a)

“A superior court reviewing an appeal of a transfer order may not, however, re-weigh the evidence, decide which factors are more important, and reverse the district court on that basis... Put simply, a superior court may not substitute its judgment for that of the district court.”

In re E.S., 191 N.C.App. 568

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# Transfer Exercises

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