

Pre-Adjudication – Probable Cause and Transfer

Juvenile Delinquency: A Course for
District Court Judges

November 13, 2023

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Can a first appearance be continued when the juvenile is in secure custody?

ⓘ Start presenting to display the poll results on this slide.

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

01

1. Inform of allegations

02

2. Counsel

03

3. Date of probable cause

04

4. Parent requirements

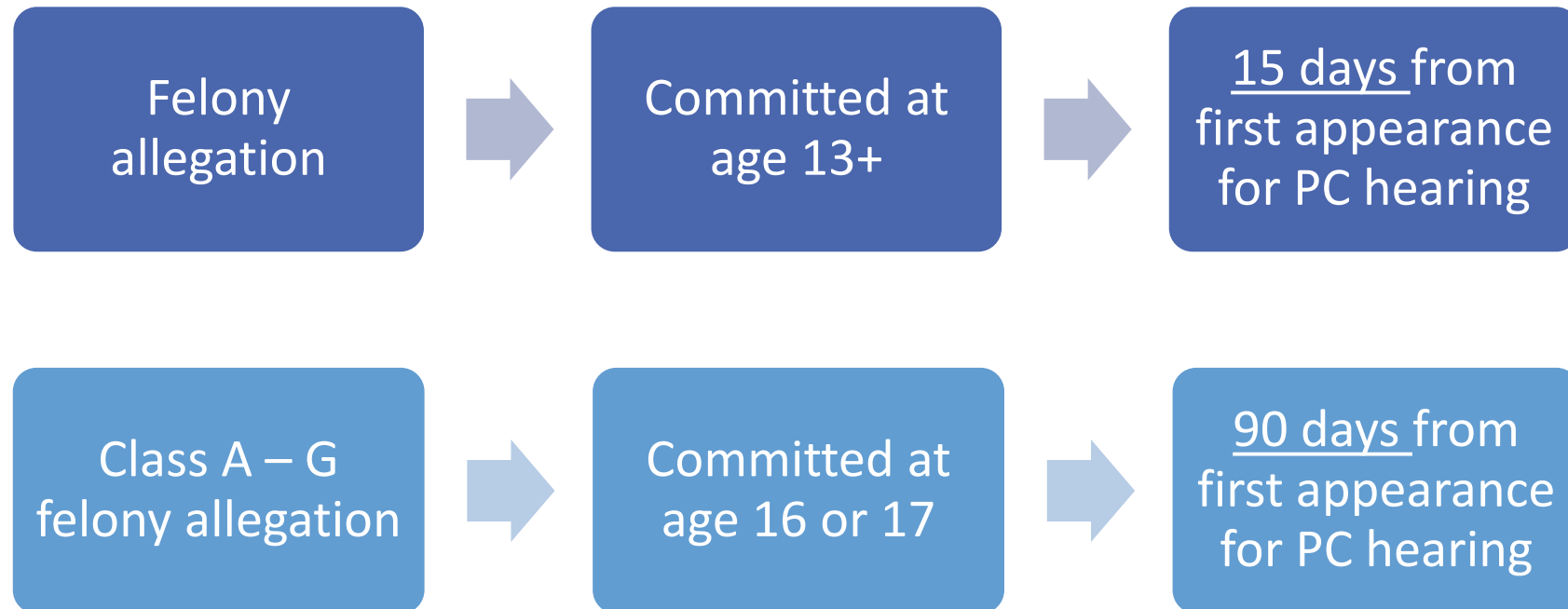
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Can a PC hearing be continued when the juvenile is in secure custody?

ⓘ Start presenting to display the poll results on this slide.

Probable Cause Timeline



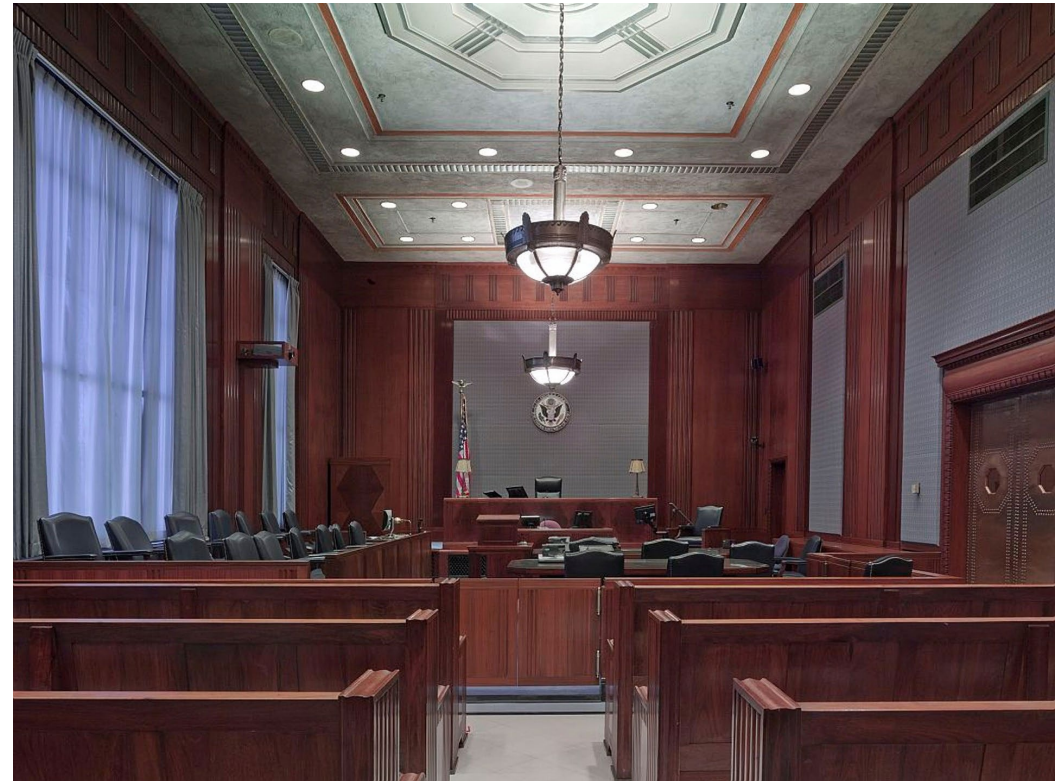
Can be continued for good cause

G.S. 7B-2202(a), -2200.5(c)

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)





Probable Cause & Evidence

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

Probable Cause & Evidence - 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

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**



Determination at Probable Cause Hearing

Probable cause to believe that the offense charged has been committed and that the juvenile committed it

G.S. 7B-2202(c)

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**Must a case be dismissed if there is no PC
for a charged felony?**

ⓘ Start presenting to display the poll results on this slide.

No Felony Probable Cause

G.S. 7B-2202(f)

Dismissal

- Jeopardy has not attached

Probable cause on lesser included misdemeanor

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

Transfer |



One transfer mechanism per case

Jurisdiction over greater and lesser included offenses and any offense based on same act or transaction, or series of acts or transactions part of a single scheme or plan, transfer when one felony is transferred

G.S. 7B-2203(c)



Charges can be added after transfer if related

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

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



Table 1. Transfer Mechanisms by Age at Offense and Felony Classification

Age at Offense	Felony Classification	Transfer Mechanism	Mandatory?
13–15	A	Finding of probable cause ^a + indictment (12/1/23)	Yes ^b
	B1–I	Finding of probable cause, motion for transfer, and judicial determination at transfer hearing ^c	No ^d
16, 17	A–C	Finding of probable cause or return of an indictment ^e	Yes ^f
	D–G	Finding of probable cause or return of an indictment ^g	Only if prosecutor chooses to transfer ^h
	H–I	Finding of probable cause, motion for transfer, and judicial determination at transfer hearing. ⁱ	No ^j

a. G.S. 7B-2200.

b. *Id.*

c. G.S. 7B-2200, -2203.

d. *Id.*

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

f. *Id.*

g. *Id.*

h. G.S. 7B-2200.5(a1).

i. G.S. 7B-2200.5(b), -2203.

j. *Id.*

Mandatory Transfer

Class A Felony at 13, 14, 15

- On finding of PC or, for offenses on or after 12/1/23, notice of returned indictment
- G.S. 7B-2200

Class A - C Felony at 16, 17

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

Mandatory Transfer – Prosecutorial Discretion (effective 12/1/2021)

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)

A complaint and petition must precede any finding that an indictment has been returned

Cases **MUST** begin in district court in order to be transferred

Indictment 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**



S.L. 2023-114 Transfer Based on Returned Indictment



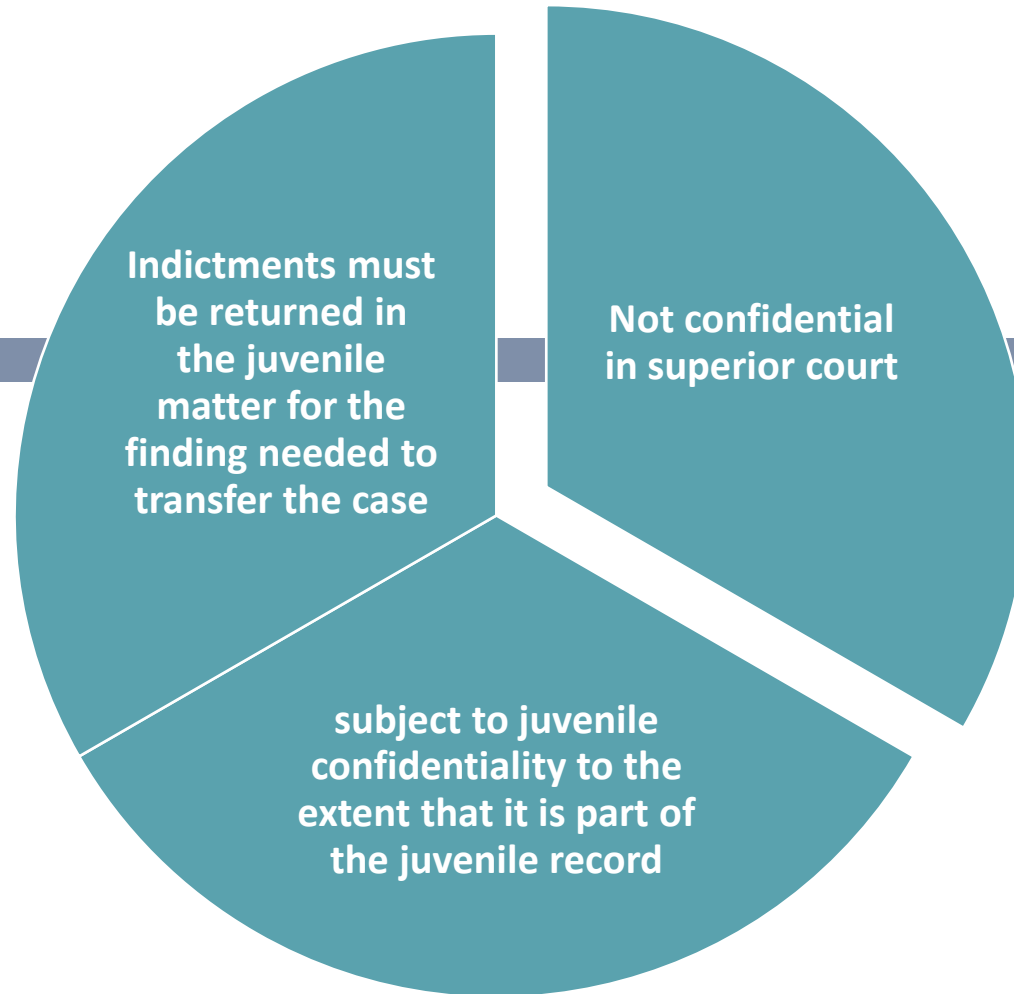
Finding that a qualifying indictment has been returned no longer required



Transfer triggered by notice under G.S. 15A-630

Offenses committed on or after 12/1/23

Confidentiality?



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”

Discretionary Transfer

Class B1 - I Felony at 13,
14, 15

Class H - I Felony at 16, 17

G.S. 7B-2200, -2200.5(b)

Finding of PC

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graph TD; A[Finding of PC] --> B[Motion to transfer]; B --> C[Transfer hearing];
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Motion to transfer

Transfer hearing

Transfer Hearing

Prosecutor and juvenile
may be heard and offer
evidence

(G.S. 7B-2203(a))

➤ *Rules of evidence
do apply*



Transfer Determination

Whether the protection of the public
and the needs of the juvenile will be
served by transfer

G.S. 7B-2203(b)

Factors that **MUST** be considered

G.S.7B-2203(b)

- age
- maturity
- intellectual functioning
- prior record
- prior rehabilitation attempts
- available juvenile facilities and programs and likelihood of benefit from treatment and rehabilitative efforts
- whether alleged offense was committed in an aggressive, violent, premeditated, or willful manner
- Seriousness of the offense and whether protection of the public requires adult prosecution

Transfer Order

Specify	Order must specify reasons for transfer
DO NOT need	DO NOT need findings of fact to support conclusion that needs of juvenile or protection of public would be served by transfer
DO NEED	DO NEED to reflect that court considered all 8 factors

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

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>

Location Of Court	Court Superior	Date	Time <input type="checkbox"/> AM <input type="checkbox"/> PM
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To The Juvenile/Defendant Named Above: 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.

Your release to _____ is authorized upon execution of your:

WRITTEN PROMISE to appear UNSECURED BOND in the amount shown above
 CUSTODY RELEASE SECURED BOND in the amount shown above
 HOUSE ARREST with ELECTRONIC MONITORING administered by (agency) _____ and the SECURED BOND above. You may leave your residence for the purpose(s) of employment counseling course of study vocational training

Your release is not authorized.

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.

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.

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 _____.

The juvenile/defendant was arrested or surrendered after failing to appear as required under a prior release order.

This was the juvenile/defendant's second or subsequent failure to appear in this case.

Your release is subject to the conditions shown on the attached AOC-CR-630. AOC-CR-631 Other: _____.

Date	Name Of Judicial Official (type or print)	Signature Of Judicial Official
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Magistrate Deputy CSC Assistant CSC Clerk Of Superior Court District Court Judge Superior Court Judge

ORDER OF COMMITMENT

To The Custodian Of The Juvenile Detention Facility Named Below: 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.

To the Sheriff of _____ County: 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.

Name Of Juvenile Detention Facility	Date	Signature Of Judicial Official
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WRITTEN PROMISE TO APPEAR OR CUSTODY RELEASE

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
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Name Of Person Agreeing to Supervise Juvenile/Defendant (type or print)	Address Of Person Agreeing To Supervise Juvenile/Defendant
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JUVENILE/DEFENDANT RELEASED ON BAIL

Date	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Detention Facility Official (type or print)	Signature Of Detention Facility Official
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AOC-CR-922

Right to Appeal Transfer Decision



To superior court for a hearing on the record



Notice required in open court or in writing within 10 days after entry of the transfer order

Transfer Decision Appellate Review

- Standard = **abuse of discretion** on the issue of transfer (no review on findings of probable cause allowed at this time)
- G.S. 7B-2603(a), *In re E.S.*, 191 N.C.App. 568



A woman with long, dark, wavy hair, wearing a light blue button-down shirt, is shown from the chest up. She has a confused or questioning expression on her face, with furrowed brows and a slightly open mouth. The background is a plain, light gray color.

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/>

Key Points

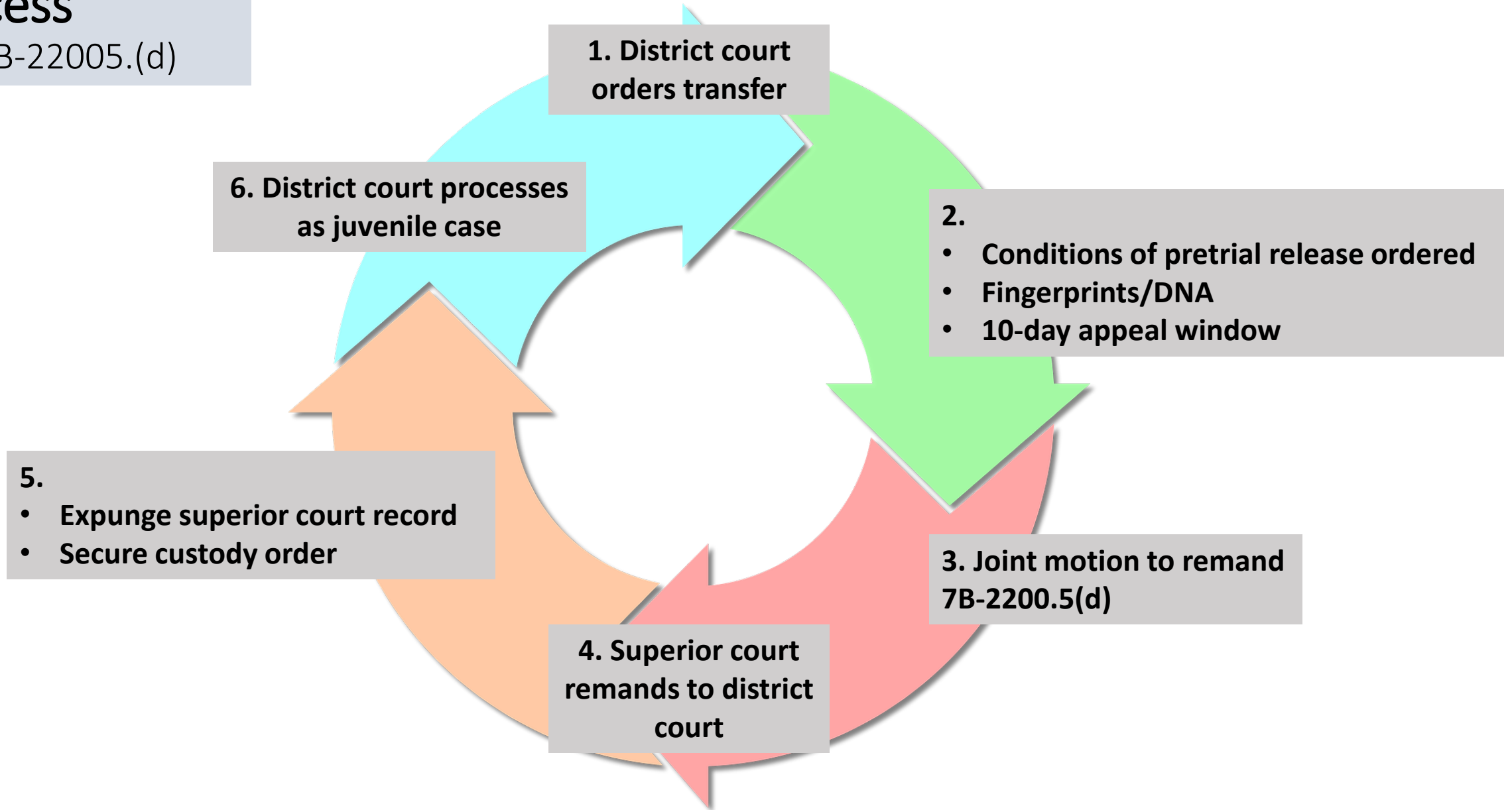
Criminal matter under jurisdiction of the superior court

CRS numbers can and should be manually generated

No orders for arrest based on returned indictment

Remand Process

G.S. 7B-22005.(d)





Transfer Exercises