

Transfer of Juvenile Delinquency Cases to Superior Court

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North Carolina law allows, and sometimes requires, certain juvenile delinquency cases to be transferred to superior court for trial in the criminal system. Whether a juvenile case is subject to transfer and how a case subject to transfer is transferred depends on the age of the juvenile at the time of the offense and the offense that is charged. This bulletin describes the transfer process, from case origination through appeal of a transfer order.

The Legal Effect of Transfer

Article 22 of Chapter 7B of the North Carolina General Statutes (hereinafter G.S.) establishes a procedure to move certain matters that begin under the original jurisdiction of the district court as juvenile delinquency cases to the jurisdiction of the superior court “for trial as in the case of adults.”¹ These cases begin under juvenile jurisdiction and, following the procedure provided in the Juvenile Code, shift to become criminal matters under the jurisdiction of superior court. The young people who are subject to these proceedings begin as juveniles who are alleged to be delinquent and then become defendants in criminal proceedings. Once these matters are under the jurisdiction of the superior court, they are indistinguishable from other criminal proceedings.²

In 1965, the United States Court of Appeals held that the determination of transfer is “critically important.”³ That importance was reinforced by the U.S. Supreme Court the very next year when, referring to the transfer of a case to criminal court, the Supreme Court stated, “[T]here is no place in our system of law for reaching a result of such tremendous consequences without ceremony—without hearing, without effective assistance of counsel, without a statement of reasons.”⁴

The Juvenile Code provides for varying procedures to transfer a case to superior court. However, no matter how the transfer occurs, the legal effect is the same. The juvenile becomes subject to prosecution under the criminal law and faces the possibility of a criminal conviction, a criminal record, and incarceration in the state prison system.

Cases Subject to Transfer

The Juvenile Code allows transfer of cases in which a felony is alleged to have occurred when the juvenile was 13 or older.⁵ A subset of those cases *must* be transferred to superior court. That subset includes cases in which

- a Class A felony is alleged to have been committed at age 13 or older⁶ and
- a Class B1–C felony is alleged to have been committed at age 16 or 17.⁷

1. G.S. 7B-2200, -2200.5.

2. There is a right to an interlocutory appeal of any order transferring jurisdiction to superior court under G.S. 7B-2603. This is the one legal component of a case that is transferred that differs from the criminal law once the superior court obtains jurisdiction. There is nothing that distinguishes a transferred case from any other criminal case after the transfer order is upheld following such an appeal.

3. *Black v. United States*, 355 F.2d 104 (D.C. Cir. 1965).

4. *Kent v. United States*, 383 U.S. 541, 554 (1966).

5. G.S. 7B-2200, -2200.5.

6. G.S. 7B-2200, -2200.5(a).

7. G.S. 7B-2200.5(a), (a1).

In addition, a case in which any Class D–G felony is alleged to have been committed at age 16 or 17 must be transferred unless the prosecutor chooses to retain the case as a juvenile matter.⁸

Case Initiation

District court has exclusive, original subject matter jurisdiction of juvenile matters, including most felonies alleged to have been committed by juveniles.⁹ These cases must be initiated the way all juvenile cases are initiated: via the filing of a petition.¹⁰ The superior court may obtain subject matter jurisdiction over a matter that is originally subject to juvenile jurisdiction only after it is transferred from the district court according to the procedure prescribed by statute.¹¹

Sufficiency of Petitions

A juvenile petition “serves essentially the same function as an indictment in a felony prosecution and is subject to the same requirement that it aver every element of a criminal offense, with sufficient specificity that the accused is clearly apprised of the conduct for which he is being charged.”¹² Fatal defects in a juvenile petition are jurisdictional.¹³ Therefore, the juvenile petition must include facts that support every element of all charged offenses with sufficient precision to clearly apprise the juvenile of the conduct that is the subject of the accusation.¹⁴

At the same time, it is not necessary for the petition to include every offense that may be pursued after the case is transferred. Under G.S. 7B-2203(c),

[w]hen the case is transferred to superior court, the superior court has jurisdiction over that felony, any offense based on the same act or transaction or on a series of acts or transactions connected together or constituting parts of a single scheme or plan of that felony, and any greater or lesser included offense of that felony.

The North Carolina Court of Appeals relied on this statute to hold that a conviction of conspiracy to commit armed robbery following transfer of a case was proper, despite the fact that the case included two juvenile petitions that alleged only murder and attempted armed robbery.¹⁵ The court held that because the conspiracy charge was transactionally related to the

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

9. G.S. 7B-1601. *But see* G.S. 7B-1501(7)b (no juvenile jurisdiction for violations of Chapter 20 of the General Statutes when they are alleged to have been committed at ages 16 or 17); G.S. 7B-1604(b) (no juvenile jurisdiction over any offense committed by a juvenile when that juvenile has been convicted previously in criminal court for any offense other than a misdemeanor or infraction motor-vehicle-law violation, other than an offense that involved impaired driving); G.S. 7B-1501(17) (youth under the age of 18 who are married, emancipated, or members of the armed forces are excluded from the statutory definition of *juvenile* and are therefore excluded from juvenile jurisdiction). Cases that fall under any of these exceptions correctly begin as criminal matters.

10. G.S. 7B-1804.

11. *State v. Dellinger*, 343 N.C. 93, 95 (1996).

12. *In re Griffin*, 162 N.C. App. 487, 493 (2004).

13. *In re S.R.S.*, 180 N.C. App. 151, 153 (2006).

14. *State v. Jordan*, 75 N.C. App. 637, 639 (1985).

15. *State v. Jackson*, 165 N.C. App. 763 (2004).

transferred armed robbery charge, the superior court also had jurisdiction over the conspiracy offense. It was proper to obtain an indictment of and conviction on the related charge after transfer, despite its never being alleged in a juvenile petition.

Putting these pieces of law together, it is clear that a juvenile petition must be filed to initiate a case subject to transfer. That petition must allege at least one felony that is subject to transfer with sufficient specificity to provide notice to the juvenile of the behavior that is the basis for the charge. At the same time, the petition does not have to include every related offense that may be pursued following transfer. Related offenses can be added after transfer, as long as they are based on the same act or transaction, or on a series of acts or transactions connected together or constituting parts of a single scheme or plan of the felony alleged in the petition and subsequently transferred. Related offenses also include any greater or lesser included offenses of the felony that is alleged in the petition and subsequently transferred.

First Appearance

A first appearance must be held in accordance with the Juvenile Code in all cases that are subject to transfer. The Juvenile Code mandates a first appearance *within ten days* of the filing of a delinquency petition for all felony allegations.¹⁶ The first appearance is required to be held sooner, at the initial secure or nonsecure custody hearing, if the youth is being held in secure or nonsecure custody.¹⁷

The court must accomplish four things at the first appearance:

1. It must inform the juvenile of the allegations in the petition.
2. It must determine whether the juvenile has retained counsel or been assigned counsel, appointing counsel if the juvenile is not yet represented.
3. It must inform the juvenile of the date of the probable cause hearing, if such a hearing is required.
4. It must inform the juvenile's parent, guardian, or custodian that the parent, guardian, or custodian must attend all hearings in the proceeding and can be held in contempt of court for failure to attend.¹⁸

Transfer Pathways: An Overview

The Juvenile Code provides three different procedures that can, and sometimes must, be used to transfer a case. The two critical factors that determine which procedure or procedures to use are (1) age at time of the offense and (2) offense classification.

Age at the Time of Offense

Both G.S. 7B-2200 and G.S. 7B-2200.5, the statutes that provide transfer procedures, are grounded in the age that the juvenile was "at the time the juvenile allegedly committed an offense." Age at the time of the offense is foundational to establishing

16. G.S. 7B-1808(a).

17. *Id.*; see also G.S. 7B-1906 (requiring an initial secure custody hearing within five calendar days of an initial remand to secure custody and within seven calendar days of an initial remand to nonsecure custody).

18. G.S. 7B-1808(b).

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	Yes ^b
	B1–I	Finding of probable cause, motion for transfer, and judicial determination at transfer hearing ^c	No ^d
	A–C	Finding of probable cause or return of an indictment ^e	Yes ^f
16, 17	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.*

subject matter jurisdiction.¹⁹ In addition, the court only has jurisdiction to transfer cases to superior court if they meet the various age requirements laid out in the Juvenile Code. It is therefore critical that age at offense is precisely known.

A juvenile’s age is based on the “birthday rule.”²⁰ Youth become the next chronological age on the first second of their date of birth, regardless of the time of day that the actual birth occurred. Age must be measured chronologically, and not developmentally, for determining a juvenile’s age at offense.²¹

Offense Classification

Determining the correct procedure to follow for transfer depends on both the age at the time of offense and on the offense classification. For example, every case with a Class A felony alleged to have been committed at age 13 or older is subject to mandatory transfer.²² However, as described below, the mechanism that triggers transfer varies, depending on the age at the time of the offense. There is significant variation in how cases that include Class B1–I felonies can and sometimes must be transferred, depending on age at the time of the offense. Table 1 provides an overview of this variation, as well as which combinations of age at offense and offense classification are subject to mandatory transfer.

There is no need to use multiple transfer mechanisms if a case includes felonies that have varying transfer procedures. This is because G.S. 7B-2203(c) provides that the superior court obtains jurisdiction over all related offenses when one felony in the case is transferred. Therefore, only one transfer mechanism per case should be used.²³

19. *State v. Collins*, 245 N.C. App. 478 (2016).

20. *In re Robinson*, 120 N.C. App. 874, 877 (1995).

21. *In re Wright*, 137 N.C. App. 104, 111 (2000).

22. G.S. 7B-2200, -2200.5(a).

23. *See In re Ford*, 49 N.C. App. 680 (1980) (affirming transfer of breaking and entering charges on transfer of murder charge). For a fuller discussion of this topic, see Jacquelyn Greene,

Transfer Pathways in Detail

Class A Felony Alleged at Age 13, 14, or 15: Mandatory Transfer

Transfer of a case that includes a Class A felony alleged to have been committed at ages 13, 14, or 15 is required, following notice and a finding of probable cause for the Class A felony.²⁴ Under G.S. 7B-2202(a), the probable cause hearing must be held within *fifteen days* of the first appearance unless the hearing is continued for good cause. The hearing must be conducted in accordance with the requirements of G.S. 7B-2202, unless the juvenile waives in writing the right to the hearing and stipulates to a finding of probable cause.²⁵ Once probable cause is found, the court must transfer the case. The court does not have discretion, and there is no transfer hearing. Form AOC-J-343, Juvenile Order—Probable Cause Hearing, should be used to order the transfer in this circumstance.²⁶

Mandatory transfer of Class A felonies became law in 1979 when a new Juvenile Code was enacted in North Carolina.²⁷ That law required that all capital offenses committed at age 14 or older be transferred to superior court, following a finding of probable cause.²⁸ The statute was amended to replace “capital offense” with “Class A felony” in 1991.²⁹ The legislature lowered the age at offense to 13 in 1994.³⁰ While North Carolina’s appellate courts have never explicitly ruled on the constitutionality of a mandatory transfer statute, several cases that were transferred to superior court pursuant to the mandatory transfer statute have been upheld by the North Carolina Court of Appeals.³¹

Class A–C Felony Alleged at Age 16 or 17: Mandatory Transfer

Transfer of a case in which a Class A–C felony is alleged to have been committed at age 16 or 17 is also always required.³² Transfer must be ordered by the court after either

1. a finding of probable cause on the Class A–C felony³³ or
2. the return of an indictment on the Class A–C felony.³⁴

All Related Charges Are Transferred When One Felony in a Delinquency Case Is Transferred, ON THE CIVIL SIDE, UNC SCH. OF GOV'T BLOG (Feb. 25, 2020), <https://civil.sog.unc.edu/all-related-charges-are-transferred-when-one-felony-in-a-delinquency-case-is-transferred/>.

24. G.S. 7B-2200.

25. G.S. 7B-2202(d).

26. Form AOC-J-343 is available at https://www.nccourts.gov/assets/documents/forms/j343_0.pdf?0PL0PsHoeMTTfWoqkqsluNf3MqOiQduw (last visited September 30, 2021).

27. G.S. 7A-557 (1980) (recodified as G.S. 7A-608 (1992)(replacing capital offense with Class A felony) and G.S. 7B-2200).

28. G.S. 7A-557 (1980).

29. S.L. 1991-842 (recodifying the statute at G.S. 7A-608).

30. S.L. 1994-22es, § 25.

31. *See, e.g., In re Ford*, 49 N.C. App. 680 (1980) (affirming transfer of murder and breaking and entering charges pursuant to mandatory transfer statute); *In re K.R.B.*, 134 N.C. App. 328 (1999) (affirming transfer of first-degree murder charge pursuant to mandatory transfer statute); *State v. Brooks*, 148 N.C. App. 191 (2001) (affirming transfer of first-degree murder charge pursuant to mandatory transfer statute).

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

33. G.S. 7B-2200.5(a)(2).

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

Probable Cause

The prosecutor may choose to pursue a finding of probable cause to trigger transfer of a case in which a Class A–C felony is alleged to have been committed by a juvenile at age 16 or 17. The juvenile must be provided notice,³⁵ and a probable cause hearing must be conducted within *ninety days* of the juvenile’s first appearance.³⁶ The hearing may be continued for good cause.³⁷ The hearing must be conducted in accordance with the requirements of G.S. 7B-2202, unless the juvenile waives in writing the right to the hearing and stipulates to a finding of probable cause.³⁸ The form AOC-J-343, Juvenile Order—Probable Cause Hearing, should be used to order transfer in these cases, following a finding of probable cause. There is no transfer hearing.

Indictment

Alternatively, the prosecutor may choose to trigger mandatory transfer of cases in which Class A–C felonies are alleged to have occurred at age 16 or 17 through the return of a true bill of indictment. G.S. 7B-2200.5(a)(1) requires that notice be given to the juvenile and that the district court make a finding that a bill of indictment has been returned charging a felony subject to mandatory transfer. The form AOC-J-444, Juvenile Order—Transfer After Bill of Indictment, should be used to order transfer under these circumstances.³⁹

There are no statutes directing when charges may be submitted to the grand jury in a case subject to transfer, how the returned indictment should be provided to the district court, or whether the returned indictment is confidential prior to the transfer. The absence of such provisions raises significant questions about how to implement this process. Thus, localities have been left to develop their own implementation processes.⁴⁰ There is no transfer hearing.

No Order for Arrest on Return of True Bill of Indictment

An order for arrest *should not be issued* when a true bill of indictment is returned related to a matter that is under juvenile jurisdiction. This will be true for every case that is being transferred as a result of the indictment. Because the district court must make a finding and order the transfer, the case remains under juvenile jurisdiction at the same time that there is an indictment. While juveniles may be taken into temporary custody and ordered into secure custody, they may not be arrested.⁴¹ Therefore, an order of arrest should not be generated when an indictment is returned in a case that has not yet been transferred by the district court.⁴²

35. G.S. 7B-2200.5(a)(2).

36. G.S. 7B-2200.5(c).

37. *Id.*

38. G.S. 7B-2202(d).

39. Form AOC-J-444 is available at https://www.nccourts.gov/assets/documents/forms/j444.pdf?3yV2sh27hpytmQwmPfeL_hBhba2tXHOP (last visited September 30, 2021).

40. For more detail on the procedural gaps, see Jacquelyn Greene, *The Indictment Process and Juvenile Transfer*, ON THE CIVIL SIDE, UNC SCH. OF GOV’T BLOG (Jan. 28, 2020), <https://civil.sog.unc.edu/the-indictment-process-and-juvenile-transfer/>.

41. See G.S. 7B art. 19.

42. This is reflected in the note to the court on the first page of the form AOC-CR-215, Notice of Return of Bill of Indictment, <https://www.nccourts.gov/assets/documents/forms/cr215.pdf?NnLfOq7Ov9dC7jFkwsEK1vgUoP8tANgZ> (“An Order for Arrest shall *not* be issued for an indicted juvenile whose case began in juvenile court and for which the district court has not yet entered an order for transfer to superior court pursuant to G.S. 7B-2200 or G.S. 7B-2200.5(a)(1).”).

Class D–G Felony Alleged at Age 16 or 17: Mandatory Transfer at Prosecutor Discretion

The Juvenile Justice Reinvestment Act, which brought most offenses committed at ages 16 and 17 under juvenile jurisdiction, included Class D–G felonies in the mandatory transfer structure described above for Class A–C felonies committed at ages 16 and 17.⁴³ However, Session Law 2021-123 enacted prosecutorial discretion to use that mandatory transfer structure for Class D–G felonies.⁴⁴ Beginning with offenses committed on or after December 1, 2021, the prosecutor may decline to transfer a case in which the most serious offense is a Class D–G felony committed at age 16 or 17.⁴⁵ If the prosecutor exercises this discretion, the matter remains in juvenile court following a finding of probable cause.⁴⁶ The prosecutor may reconsider and choose to transfer the matter at any time before adjudication.⁴⁷

If the prosecutor chooses to pursue transfer, transfer is mandatory under the same pathways described above for Class A–C felonies alleged to have been committed at age 16 or 17 (either following a finding of probable cause or the return of an indictment).

All Other Felonies: Discretionary Transfer

Cases are subject to discretionary transfer when they include felonies committed at age 13 or older and do not include any of the above-described felonies subject to mandatory transfer. This includes

- Class B1–I felonies committed at ages 13–15 and
- Class H and I felonies committed at ages 16 and 17.

Discretionary transfer follows a three-step process:

1. a finding of probable cause;
2. a motion by the prosecutor, juvenile’s attorney, or court to transfer; and
3. a transfer hearing at which the court determines whether to transfer the case.

The probable cause hearing in these matters must be conducted within *fifteen days* of the juvenile’s first appearance.⁴⁸ The hearing may be continued for good cause.⁴⁹ Probable cause can be found as a result of evidence presented at the hearing or as a result of the juvenile’s written waiver of the hearing and stipulation to the finding.⁵⁰

If probable cause is found, the prosecutor, the juvenile’s attorney, or the court may move to transfer the case. Once the motion is made, the court may proceed to a transfer hearing or set a date for a transfer hearing.⁵¹ If the juvenile does not receive notice of intent to seek transfer at least five days before the probable cause hearing, the court must continue the transfer hearing at the request of the juvenile.⁵²

43. S.L. 2017-57, § 16D.4.(e).

44. S.L. 2021-123, § 4.

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

46. *Id.*

47. *Id.*

48. G.S. 7B-2202(a).

49. *Id.*

50. G.S. 7B-2202(c), (d).

51. G.S. 7B-2202(e).

52. *Id.*

Transfer Hearings

Both the prosecutor and the juvenile have the right to present evidence at the transfer hearing. The juvenile's attorney is expressly permitted to examine any records that the court may consider in making the transfer determination, including court and probation records.⁵³ The district court is statutorily required to (1) determine whether the protection of the public and the needs of the juvenile will be served by transfer of the case and (2) consider eight specified factors.⁵⁴

The eight factors that must be considered are

1. the juvenile's age;
2. the juvenile's maturity;
3. the juvenile's intellectual functioning;
4. the juvenile's prior record;
5. prior attempts to rehabilitate the juvenile;
6. facilities or programs available to the court while it will retain juvenile jurisdiction over the matter and the likelihood that the juvenile would benefit from treatment or rehabilitative efforts;
7. whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner; and
8. the seriousness of the offense and whether the protection of the public requires that the juvenile be prosecuted as an adult.⁵⁵

While the court must consider all eight of these factors, the transfer order does not have to include findings of fact to support the court's conclusion that the needs of the juvenile or the protection of the public would be served by transfer.⁵⁶ At the same time, the transfer order must specify the reasons for transfer⁵⁷ and reflect that the court considered all eight factors. The North Carolina Court of Appeals found a transfer order that stated the following reasons for transfer to be insufficient.

1. The juvenile was 15 years old.
2. A codefendant in the matter was 17 years old.
3. It was desirable to handle both cases in one court.
4. The juvenile admitted guilt to an officer.
5. The damage done to public property was extensive (\$23,564.97 to school buses and \$785.30 to a school fence).⁵⁸

The court held that the transfer order was deficient, failing to adequately state the reasons for transfer, because it did not reflect "that consideration was given to the needs of the juvenile, to his rehabilitative potential, and to the family support he receives."⁵⁹ The transfer hearing order

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

54. G.S. 7B-2203.

55. G.S. 7B-2203(b).

56. *State v. Green*, 124 N.C. App. 269, 276 (1996).

57. *In re E.S.*, 191 N.C. App. 568, 572–73 (2008).

58. *In re J.L.W.*, 136 N.C. App. 596, 600–01 (2000).

59. *Id.* at 601.

form provided by the North Carolina Administrative Office of the Courts, AOC-J-442, includes a blank box in which the reasons for transfer should be included.⁶⁰

If the court decides not to transfer the case to superior court, a separate adjudicatory hearing on the petition must occur in juvenile court.⁶¹ The adjudicatory hearing may occur immediately following the transfer hearing, or it may be scheduled by the court at the conclusion of the transfer hearing.⁶² The adjudicatory hearing may also be continued for good cause.⁶³

Procedure when Transfer Is Ordered

Conditions of Pretrial Release

Once an order of transfer is entered, the juvenile has a right to pretrial release under Article 26 of the North Carolina Criminal Procedure Act.⁶⁴ Therefore, the district court must determine the conditions of pretrial release. The court must impose at least one of the following conditions:

1. release on written promise to appear,
2. release on unsecured appearance bond,
3. placement in the custody of a designated person or organization agreeing to supervise the youth,
4. release on a secured appearance bond, or
5. house arrest with electronic monitoring.⁶⁵

The court must impose one of the first three conditions unless it finds that such release (1) will not ensure the appearance of the youth (now the defendant) as required, (2) will pose a danger of injury to any person, or (3) is likely to result in destruction of evidence, subornation of perjury, or intimidation of potential witnesses.⁶⁶ If the court makes any of these findings, then either release on a secured appearance bond or house arrest with electronic monitoring must be ordered.⁶⁷ Courts are required to take several factors into consideration when determining conditions for pretrial release, on the basis of available information, including

- the nature and circumstances of the offense charged;
- the weight of the evidence against the youth;
- the youth's family ties, employment, financial resources, character, and mental condition;
- whether the youth is intoxicated to such a degree that the youth would be endangered by being released without supervision;
- the length of the youth's residence in the community;
- the youth's record of convictions;

60. Form AOC-J-442 is available at <https://www.nccourts.gov/assets/documents/forms/j442-en.pdf?jVUJC6XXFuDhOEO18IBR13CaKc3yYdV0> (last visited September 30, 2021).

61. G.S. 7B-2203(d).

62. *Id.*

63. *Id.*

64. G.S. 7B-2204 (providing that upon entry of an order of transfer, the juvenile has a right to pretrial release as provided in G.S. 15A-533 and G.S. 15A-534); G.S. 7B-2603(b) (same).

65. G.S. 15A-534(a). If house arrest with electronic monitoring is ordered, a secured bond must also be imposed.

66. G.S. 15A-534(b).

67. *Id.*

- the youth’s history of flight to avoid prosecution or failure to appear at court proceedings; and
- any other evidence relevant to the issue of pretrial release.⁶⁸

The Criminal Procedure Act contains several additional provisions regarding determining conditions of pretrial release that apply to specific charges, such as capital offenses⁶⁹ and domestic violence offenses,⁷⁰ and specific situations, such as previous failures to appear.⁷¹ For more detailed information on the additional restrictions and requirements related to determining conditions of pretrial release, see *Criminal Proceedings Before North Carolina Magistrates*⁷² and the *North Carolina Superior Court Judges’ Benchbook*.⁷³

The court is required to issue an order that details the conditions for pretrial release. Form AOC-CR-922 should be used for this purpose after the court orders the case transferred.⁷⁴ The order must also inform the defendant of the penalties associated with violation of the conditions in the order and that arrest will be ordered immediately upon any violation.⁷⁵

Fingerprinting and DNA Sample

The Juvenile Code requires fingerprinting of the youth and submission of those fingerprints to the State Bureau of Investigation when jurisdiction is transferred to superior court.⁷⁶ The Juvenile Code also requires the taking of a DNA sample from the youth once the case is transferred if the charged offense is one that falls within the mandate for DNA sample collection in the Criminal Procedure Act.⁷⁷

Addressing Counsel for the Juvenile

Transfer of a case has implications for appointment of counsel to represent the juvenile. The case begins as a juvenile matter and, therefore, counsel must be appointed under G.S. 7B-2000 unless counsel is retained for the juvenile. Under the Juvenile Code, juveniles are “conclusively presumed to be indigent,” and there is therefore no need for an affidavit of indigency.⁷⁸

When a delinquency case is transferred to superior court, it is no longer governed by provisions of the Juvenile Code. Therefore, the original counsel appointment that was made under G.S. 7B-2000 no longer applies. The case becomes a criminal matter once transfer is ordered, and the law governing the appointment of counsel in criminal cases now applies to the case.

68. G.S. 15A-534(c).

69. G.S. 15A-533(c).

70. G.S. 15A-534.1.

71. G.S. 15A-534(d1).

72. JESSICA SMITH, *CRIMINAL PROCEEDINGS BEFORE NORTH CAROLINA MAGISTRATES 27–37* (UNC School of Government, 2014)

73. JESSICA SMITH, *Pretrial Release*, in *NORTH CAROLINA SUPERIOR COURT JUDGES’ BENCHBOOK* (UNC School of Government, Apr. 2015), <https://benchbook.sog.unc.edu/criminal/pretrial-release>.

74. Form AOC-CR-922 is available at https://www.nccourts.gov/assets/documents/forms/cr922_0.pdf?7kndZsMih2oH5hlctS4bekuCxVl6TxLv (last visited December 20, 2021).

75. G.S. 15A-534(d).

76. G.S. 7B-2201(a).

77. G.S. 7B-2201(b); *see also* G.S. 15A-266.3A (DNA sample requirements under the state Criminal Procedure Act).

78. G.S. 7B-2000(b).

Indigent criminal defendants accused of felony offenses are guaranteed the right to counsel.⁷⁹ 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. Under 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. This is a determination that is specific to the juvenile and does not include consideration of the resources of the parent, guardian, or custodian.

The Juvenile Code does not expressly mandate that appointment of counsel be addressed immediately following transfer. However, the time immediately following transfer is critical because there is a time-limited window for appeal of the transfer order (discussed below), and the juvenile is newly eligible for conditions of pretrial release. Given the critical nature of this time period, the changing legal foundation for the appointment of counsel, and the varying ways that indigent defense is structured across North Carolina, it is sound practice for the court to address appointment of counsel immediately after ordering the transfer of the case.⁸⁰

Remand to District Court and Expungement

The Juvenile Code allows a transferred case to be remanded to district court to be handled as a juvenile matter if the alleged offense occurred when the juvenile was 16 or older.⁸¹ The superior court must remand the case when the prosecutor and the juvenile’s attorney file a joint motion for remand.⁸² There is no requirement beyond the filing of the joint motion. The superior court does not have discretion regarding the remand; once the joint motion is filed, the case must be remanded to district court. Form AOC-CR-291 should be used to order the remand.⁸³

The Juvenile Code also requires the expungement of the superior court record when the case is remanded.⁸⁴ This includes expunction of any DNA record or profile included in the state DNA

79. G.S. 7A-451; *see also* Gideon v. Wainwright, 372 U.S. 335 (1963); State v. Mays, 14 N.C. App. 90 (1972).

80. 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 the 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 is able to exercise the right to appeal the transfer order. Attorneys may want to consider providing verbal notice of appeal in court following transfer in order to meet any such obligation.

81. G.S. 7B-2200.5(d).

82. *Id.*

83. Form AOC-CR-291 is available at https://www.nccourts.gov/assets/documents/forms/cr291_0.pdf?wzR5xGJj4SpBiIm0JKU9kdQYBkUk.S9 (last visited September 30, 2021).

84. G.S. 7B-2200.5(d), 15A-145.8.

database and any DNA sample stored in the state DNA databank as a result of the remanded charges.⁸⁵ The clerk must send a certified copy of the expungement order to

1. the juvenile;
2. the juvenile's attorney;
3. the Administrative Office of the Courts;
4. the sheriff, chief of police, or other arresting agency;
5. the Division of Motor Vehicles, when applicable;
6. any state or local agency identified by the petition as bearing record of the expunged offense;
7. the Department of Public Safety, Combined Records Section; and
8. the State Bureau of Investigation.⁸⁶

Each agency that receives a certified copy must delete any public records made as a result of the remanded charges.⁸⁷ AOC-CR-291 includes an order for expungement to be used when ordering remand.⁸⁸

Confinement Orders and the Remand Process

When a case is transferred, it shifts from being under juvenile jurisdiction, subject to the Juvenile Code, to being under superior court jurisdiction, subject to the criminal law. Before transfer, if the juvenile is confined, it is pursuant to a secure custody order issued under the Juvenile Code.⁸⁹ As discussed previously, when transfer is ordered, the case becomes subject to the laws governing criminal actions, so the juvenile has the same right to conditions of pretrial release as any other defendant in a criminal proceeding.⁹⁰ Therefore, the secure custody order issued under the Juvenile Code is no longer valid and any confinement must be ordered in accordance with G.S. 15A-533 and G.S. 15A-534.⁹¹

When a case is remanded, jurisdiction (and therefore the applicable law) shifts again. The case leaves the jurisdiction of superior court, the criminal law no longer applies, and the case is again subject to the Juvenile Code. As a result, the juvenile can no longer be confined pursuant to conditions of pretrial release set under the criminal law. Instead, any confinement can once again be ordered only via a secure custody order issued in accordance with the Juvenile Code.

On December 1, 2019, when the remand provision took effect, the jurisdictional shift that occurs at remand made the issuance of a secure custody order necessary for continued confinement following remand.⁹² However, there was no statutory provision that authorized the superior court to issue a secure custody order. Session Law 2021-123 provided express authority to allow the superior court to issue a secure custody order under the Juvenile Code when remanding a case.⁹³ A hearing in district court to determine the need for continued secure custody must be held no more than ten calendar days after the superior court issues a secure

85. G.S. 15A-145.8(b).

86. G.S. 15A-145.8(d), -150(b).

87. G.S. 15A-145.8(d).

88. See note 83, above.

89. G.S. 7B-1904.

90. G.S. 7B-2204.

91. *Id.*

92. S.L. 2019-186, § 8.(a).

93. S.L. 2021-123, § 3.(a)-(d).

custody order on remand.⁹⁴ That hearing cannot be continued or waived.⁹⁵ If the juvenile remains in secure custody after this initial hearing, ongoing secure custody hearings must be held every thirty days (unless the juvenile requests to hold the hearings every ten days, and the court finds good cause).⁹⁶ These ongoing hearings may be waived with the consent of the juvenile.⁹⁷

Place of Confinement in Transfer Cases

Secure custody for any youth under juvenile jurisdiction must be in a juvenile detention facility.⁹⁸ Therefore, juveniles who are subject to transfer must be held in juvenile detention, and not jail, while their case is under juvenile jurisdiction. This is generally true even if the juvenile is 18 or older.⁹⁹

Once a case is transferred to superior court, the place of confinement depends on the age of the youth who is now a defendant in a criminal proceeding. As previously described, youth can be confined following transfer until they satisfy conditions of pretrial release set by the court in the criminal case. If a youth under the age of 18 is confined, the youth must remain in a juvenile detention facility.¹⁰⁰ Once the juvenile reaches the age of 18, the juvenile must be transported by Juvenile Justice to the custody of the sheriff for the county where the charges arose for confinement in the county jail.¹⁰¹

Posting Bond While in a Juvenile Detention Facility

Youth who have cases under superior court jurisdiction following transfer must be afforded the opportunity to post bond if they are confined pursuant to a secured bond. This can become very complicated when the place of confinement is a juvenile detention facility. Juvenile detention facilities lack the personnel and systems necessary to process bonds, which are not part of the juvenile justice system.

Geography may also present a challenge. Not every county has a juvenile detention facility. A youth may therefore have a criminal case pending in one county and be confined in a juvenile detention facility in another county. This creates practical barriers related to the actual processing of the bond as well as the physical release of the youth. The bond must be posted in the county where the criminal matter is pending, rather than the county where the juvenile is

94. G.S. 7B-1906(b2).

95. *Id.*

96. G.S. 7B-1906(b1)–(b2).

97. G.S. 7B-1906(b1).

98. G.S. 7B-1905(b).

99. *But see* G.S. 7B-1905(d) (providing that if secure custody is ordered for any person age 18 or older over whom the court did not obtain juvenile jurisdiction before that person aged out of juvenile jurisdiction, the person may be temporarily detained in the county jail); G.S. 7B-1901(d) (providing that if secure custody is ordered for a person 21 or older over whom the court did not obtain juvenile jurisdiction before that person aged out of juvenile jurisdiction, the person must be temporarily detained in the county jail).

100. G.S. 7B-2204(a).

101. G.S. 7B-2204(c).

confined. The posting of the bond must be communicated to the juvenile detention facility. Once released, the youth must be transported back to the youth's home, which may be far from the facility.

Release of these youth following posting of a bond is also complicated because they are minors and therefore must be released to an adult. This is reflected in the Juvenile Code provisions that address pretrial release following transfer. G.S. 7B-2204(a) requires both that the court follow the provisions of G.S. 15A-533 and G.S. 15A-534 in determining conditions of pretrial release and that "[t]he release order shall specify the person or persons to whom the juvenile may be released." Release to a specified person may become challenging if the youth is being held in a facility that is far from home.

Finally, the process for these youth to post bond is complicated by federal law that requires sight and sound separation between minors and adult inmates. Many local procedures for satisfying conditions of pretrial release involve processing inside the jail where the youth is likely to come into contact with adult inmates. However, the Juvenile Justice and Delinquency Prevention Act requires sight and sound separation from adult inmates for any youth under 18 who is housed in a secure facility, regardless of whether the youth is being processed as a juvenile or as a defendant in the criminal system.¹⁰² The Act allows for a minor to be held in an adult jail for up to six hours for processing of the minor's release. If the jail is used to process release, the youth still must have no sight or sound contact with any adult inmate.¹⁰³ Therefore, any process used to post bond for youth housed in juvenile detention must comply with this requirement.

Localities need to develop procedures that allow youth to post bond while they are housed in a juvenile detention facility. This may include use of magistrates or very short-term use of jails where sight and sound separation are maintained.¹⁰⁴

Appeal of Transfer Orders

Under G.S. 7B-2603(a), juveniles have a right to appeal any orders transferring jurisdiction of their juvenile matters to the superior court. A juvenile has ten days from entry of the order of transfer in district court to give notice of appeal.¹⁰⁵ If notice is not given within ten days, the case proceeds as a superior court matter. If notice is given, the clerk must place the matter on the superior court docket, and the superior court must review the record of the transfer hearing within a reasonable time.¹⁰⁶

Preserving Confidentiality Pending Resolution of the Appeal

Because it is possible that the superior court will remand the case to juvenile court for adjudication on a finding of an abuse of discretion, Rules of Recordkeeping 12.8.1 and 12.8.2 instruct clerks to include any appeal of a transferred case on the superior court calendar as an

102. 34 U.S.C. § 11133(a)(11)(B)(i)(I) (effective Dec. 21, 2021).

103. 34 U.S.C. § 11133(a)(13)(A).

104. For more information on posting bond while in juvenile detention, see Jacquelyn Greene, *Satisfying Conditions of Pretrial Release when in Juvenile Detention*, ON THE CIVIL SIDE, UNC SCH. OF GOV'T BLOG (Sept. 22, 2020), <https://civil.sog.unc.edu/satisfying-conditions-of-pretrial-release-when-in-juvenile-detention/>.

105. G.S. 7B-2603(a).

106. *Id.*

add-on hearing/case using “In the Matter of” and the JB file number (the file number assigned in the juvenile matter).¹⁰⁷ The title of the case is to be listed only as “Appeal of Transfer.” The rules prohibit the clerk from entering the juvenile’s name or charges on the calendar. This process protects the juvenile’s confidentiality if the case returns to district court as a juvenile matter.

Rules of Recordkeeping 12.8.1 and 12.8.2 also instruct clerks not to enter the case into the Automated Criminal Information System before the appeal is resolved. This is another safeguard built in to maintain the matter’s confidentiality should the case be remanded to district court as a juvenile matter.

While the clerk must be careful to protect juvenile confidentiality during this period, the case is a criminal matter under the jurisdiction of the superior court as soon as the district court enters the order of transfer to superior court.¹⁰⁸ There is no statutorily provided lag time in superior court jurisdiction. This means that any forms used in the case after the transfer order is entered must be criminal forms. Those forms use a CRS number. For example, the form that is to be used to set conditions of pretrial release after transfer is ordered, form AOC-CR-922, Release Order for Juvenile Transferred to Superior Court for Trial, is a criminal form. As the matter is now a criminal matter under superior court jurisdiction, that form should use a CRS number and not the JB number assigned to the juvenile matter. The CRS number should be manually generated for use in the case once transfer is ordered. If an indictment is used to trigger transfer of the case, the CRS number may also be needed for the indictment process.

It is important to note that any criminal paperwork generated following transfer to superior court should be held in a secure location, such as a locked cabinet, during the ten-day period to give notice of appeal and during the pendency of any appeal. Keeping the paper file that is created during this time out of public view is another protection of confidentiality, should the case be remanded to district court as a juvenile matter.

There are several practical implications that stem from criminal, superior court jurisdiction over cases during the appeal period. For example, if conditions of pretrial release need to be revisited during this time, that issue should be heard by the superior court. If the youth violates a condition of pretrial release and needs to be apprehended by law enforcement during this time, criminal procedure provides the appropriate process (although the place of confinement for any youth under age 18 remains juvenile detention, as discussed previously). If there is a change of attorney during this timeframe, the rules related to appointment of counsel in criminal matters apply. The superior court may want to consider closing the courtroom if there is a need to hear motions in a case during the ten-day appeal period or when an appeal of a transfer order is pending in order to preserve confidentiality until the appeal is resolved.

Standard of Review on Appeal

G.S. 7B-2603(a) provides that when an appeal of the transfer order is entered, the superior court must “review the record of the transfer hearing for abuse of discretion by the juvenile court in the issue of transfer.” The North Carolina Court of Appeals explained how the abuse of discretion standard is to be applied, stating that

[a] superior court reviewing an appeal of a transfer order may not . . . re-weigh the evidence, decide which factors are more important, and reverse the district court on that basis, as the superior court did here. Put simply, a superior court

107. N.C. ADMIN. OFF. OF THE CTS., RULES OF RECORDKEEPING, r. 12.8.1, 12.8.2.

108. G.S. 7B-2203(c).

may not substitute its judgment for that of the district court. In this case, the superior court did not explain in what way the district court's decision was manifestly unreasonable. The superior court simply concluded, based on its *de novo* view of the evidence, that transfer was inappropriate. That approach does not properly apply an abuse of discretion standard of review.¹⁰⁹

In addition, the superior court may not review a finding of probable cause made by the district court before transfer.¹¹⁰ The court of appeals has repeatedly held that a finding of probable cause in a juvenile proceeding is not immediately appealable.¹¹¹

Preserving the Right to Appeal to the Court of Appeals

It is possible to preserve the right to appeal the transfer decision beyond the initial review by the superior court, but only under certain circumstances: the appeal must first be filed in the superior court, and conviction in superior court cannot be the result of a plea.

Initial Appeal to Superior Court Required

G.S. 7B-2603(d) states that “[t]he superior court order shall be an interlocutory order, and the issue of transfer may be appealed to the Court of Appeals only after the juvenile has been convicted in superior court.” In 2002 the court of appeals held that this means that issues arising from a transfer order must first be appealed to the superior court.¹¹² The court noted that in 1999, the General Assembly removed statutory language stating that failure to appeal to the superior court constituted waiver of the right to raise the issue of transfer to the court of appeals before the matter's final disposition in superior court. According to the court, this deletion indicates legislative intent to remove any potential statutory authority for skipping an appeal to the superior court and appealing directly to the court of appeals. In addition, the court noted that the general principle of appellate review in criminal matters flows from district court to the superior court and not directly from district court to the court of appeals. The court held that the defendant must first appeal the transfer order and issues arising from it to the superior court in order to preserve any appeal to the court of appeals.

No Appeal After a Guilty Plea

The North Carolina Court of Appeals addressed whether a transfer decision may be appealed following a guilty plea in superior court in *State v. Evans*.¹¹³ The court noted that other criminal statutes expressly provide for an appeal from a judgment of conviction based on a plea of guilty. The court held that there is no right to appeal a transfer decision after pleading guilty in superior court because there is no such express language in G.S. 7B-2603(d).¹¹⁴

109. *In re E.S.*, 191 N.C. App. 568, 574 (2008).

110. G.S. 7B-2603(a).

111. *In re Ford*, 49 N.C. App. 680, 683 (1980); *In re K.R.B.*, 134 N.C. App. 328, 331 (1999); *In re J.L.W.*, 136 N.C. App. 596, 598 (2000).

112. *State v. Wilson*, 151 N.C. App. 219, 226 (2002).

113. *State v. Evans*, 184 N.C. App. 736 (2007).

114. *Id.* at 740.