

North Carolina Criminal Law Blog

Change to the Law of Juvenile Jurisdiction and Juvenile Transfer to Superior Court

July 23, 2024 [Jacquelyn Greene](#)

<https://nccriminallaw.sog.unc.edu/author/jacqui22/>

[Session Law 2024-17](#)

<https://www.ncleg.gov/EnactedLegislation/SessionLaws/PDF/2023-2024/SL2024-17.pdf>

enacts changes to the law regarding the scope of original juvenile jurisdiction beginning with offenses committed on or after December 1, 2024. Law changes regarding the existing process to transfer a case from juvenile to superior court will also take effect at that time. Read on for a description of the changes.

Narrowing of Original Juvenile Jurisdiction for Offenses at Ages 16 and 17

Under current law, original jurisdiction over all felonies alleged to have been committed at ages 16 and 17, other than motor vehicle offenses, is in juvenile court, though some felonies must, and other felonies may be transferred to criminal superior court. When S.L. 2024-17 takes effect, original jurisdiction for Class A – Class E felonies alleged to have been committed at ages 16 and 17 will lie in criminal court. This includes any offenses that are transactionally related to a Class A – Class E felony offense. Because these matters will fall under original criminal jurisdiction, they will originate in the same way all other criminal matters begin. S.L. 2024-17 § 1.

The one difference between these matters and other criminal matters is the place of confinement when the defendant is under age 18. If the defendant is held pending resolution of the charges and is under the age of 18, that defendant must be housed in a juvenile detention facility. **G.S. 15A-521** https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_15A/GS_15A-521.pdf. The defendant must be transported by the Division of Juvenile Justice (DJJ) to the custody of the sheriff in the county where the charges are pending when they turn 18.

New Possibility of Removal to Juvenile Court

While these cases will begin as criminal matters, there will be a new process in the criminal law to shift the cases to juvenile jurisdiction. S.L. 2024-17 §§ 3.(a)-3.(c). This new process is called “removal.”

Removal will be available in any matter in which an indictment has been returned or a criminal information issued for a Class A – Class E felony offense alleged to have been committed at age 16 or 17, except for offenses that are violations of Chapter 20 of the General Statutes (motor vehicle law offenses). The question of removal will be at the discretion of the prosecutor and defense attorney. If the prosecutor and defense attorney file a joint motion for removal, the superior court must remove the case to juvenile court. A removal motion can be filed any time after the return of the indictment or the issuance of a criminal information and before the jury is sworn and impaneled. The prosecutor is required to provide a copy of the motion to DJJ before submitting the motion to the court.

If a removal order is issued:

- The superior court must expunge the criminal charges and superior court record according to the procedure in G.S. 15A-145.8.
- DJJ must file a juvenile petition in the case within 10 calendar days after removal.
- The superior court may issue a secure custody order if the defendant (who is now a juvenile in a delinquency matter) meets the criteria for issuing a secure custody order contained in **S. 7B-1903**

https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_7B/GS_7

[B-1903.pdf](#)>. The prosecutor must give DJJ a copy of any secure custody order issued under these circumstances as soon as possible and no more than 24 hours after the order is issued.

Cases that are removed to juvenile court from superior court must have a first appearance in juvenile court within 10 days of the filing of the petition. S.L. 2024-17 § 2.(a). They will not have a probable cause hearing in juvenile court. S.L. 2024-17 § 2.(e). Therefore, these matters will move from a first appearance in juvenile court to adjudication.

Changes to Transfer Procedure

Fewer Cases Eligible for Mandatory Transfer

There are two categories of cases that require transfer from juvenile court to superior court for trial as an adult under current law. They are 1) Class A – G felonies alleged to have been committed and ages 16 and 17 and 2) Class A felonies alleged to have been committed at ages 13, 14, and 15. When the new law takes effect on December 1st, the first category of mandatory transfer cases will be narrowed to include Class F and Class G felonies alleged to have been committed at ages 16 and 17. The remaining current mandatory transfer offenses at these ages will no longer originate under juvenile jurisdiction and will therefore not be subject to transfer. They will begin as criminal matters. Under current law the prosecutor can choose not to transfer Class F and G felonies alleged to have been committed at ages 16 and 17 and that will remain true when the new law takes effect. **G.S. 7B-2200.5(a1)**.

https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_7B/GS_7B-2200.5.pdf>

Standard Probable Cause Timeline in Mandatory Transfer Cases

Under current law a probable cause hearing is required to be held within 90 days of the first appearance in cases that allege that a Class A – Class G felony was committed at ages 16 and 17. **G.S. 7B-2200.5(c)**

https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_7B/GS_7B-2200.5.pdf. A probable cause hearing is required within 15 days of the first appearance in the other category of mandatory transfer cases—cases in which a Class A felony is alleged to have been committed at age 13, 14, or 15. **G.S. 7B-2202(a)**

https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_7B/GS_7B-2202.pdf. S. L. 2024-17 adds a new G.S. 7B-2202(b1) to provide one timeline for all mandatory transfer cases. A probable cause hearing will be required to be held within 90 days of the first appearance in cases that allege that a Class F or Class G felony was committed at age 16 or 17 and cases that allege that a Class A felony was committed at age 13, 14, or 15.

Indictment Return Appearance

Section 2.(f) of S.L. 2024-17 details the procedure to be used when transfer in a mandatory transfer case is triggered by the return of a true bill of indictment. That procedure includes that:

- The prosecutor must notify the district court immediately when a true bill of indictment is returned charging a mandatory transfer offense (a Class F or G felony at age 16 or 17 or a Class A felony at age 13, 14, or 15).
- The district court must calendar the case for an appearance within five business days of the date the true bill of indictment was returned.
- The court proceeding is called an indictment return appearance (not a transfer hearing).
- The court must determine if notice of the indictment charging an offense subject to mandatory transfer was provided as required in **S. 15A-630**
https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_15A/GS_15A-630.pdf.
- If the court determines that notice of a true bill of indictment charging the commission of a mandatory transfer offense was provided, then the court

must 1) transfer jurisdiction to superior court for trial as an adult and 2) determine conditions of pretrial release as is currently required in **S. 7B-2204**

https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_7B/GS_7B-2204.pdf .

Limitation on Right to Interlocutory Appeal of Transfer Order

Under current law there is a right to appeal any transfer order to the superior court after transfer is ordered. **G.S. 7B-2603**

https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_7B/GS_7B-2603.pdf . Notice of the appeal may be provided up to ten days after entry of the transfer order. This opportunity for an interlocutory appeal of the transfer order provides the basis for practices that keep cases confidential after transfer is ordered and until the time to appeal has tolled or the appeal is resolved. You can see a previous blog on **Dispelling Transfer Confusion** <https://nccriminallaw.sog.unc.edu/dispelling-transfer-confusion-10-day-appeal-window-orders-for-arrest/> for more detail on these practices.

Section 2.(g) of S.L. 2024-17 removes this right to an interlocutory appeal from mandatory transfer cases. Under the revised law, transfer orders issued in cases in which a Class A felony is alleged to have been committed at age 13, 14, or 15 or in which a Class F or Class G felony is alleged to have been committed at age 16 or 17 will only be appealable to the North Carolina Court of Appeals following a conviction in superior court. The elimination of the right to an interlocutory appeal in these matters will also eliminate the need for practices to keep these cases confidential during the ten-day window to file an interlocutory appeal.

Remand Expansion

Section 8.(a) of Session Law 2019-186

<https://www.ncleg.gov/EnactedLegislation/SessionLaws/PDF/2019-2020/SL2019-186.pdf> added the ability to remand back to juvenile court cases that were transferred to superior court for trial as an adult based on an allegation that a Class A – Class G felony was committed at age 16 or 17. This possibility of remand does not include matters transferred based on felony allegations alleged to have been committed at ages 13, 14, or 15.

Section 2.(c) of S.L. 2024-17 adds the possibility of remand for these cases that were omitted from S.L. 2019-186. The new opportunity for remand applies to any case that is transferred to superior court based on an allegation that a felony was committed at age 13, 14, or 15. The procedure is the same as the procedure for remand of cases that involve older youth and includes that:

- Remand is required on the filing of a joint motion in the superior court by the prosecutor and the juvenile’s attorney.
- The prosecutor must provide a copy of the motion to DJJ before submitting the motion to the court.
- The superior court must remand the case on the filing of the joint motion.
- The superior court must expunge the superior court record according to **S. 15A-145.8**
<https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_15A/GS_15A-145.8.pdf> at the time of remand.
- The superior court may issue a secure custody order at the time of remand if the juvenile meets the criteria for issuing a secure custody order contained in **S. 7B-1903**
<https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_7B/GS_7B-1903.pdf> .
- The prosecutor must provide a copy of any secure custody order issued by the superior court to DJJ as soon as possible and no later than 24 hours after the order is issued.

The case returns to juvenile jurisdiction on remand and proceeds to adjudication.

More to Come

S.L. 2024-17 also contains a handful of other changes related to juvenile delinquency procedure and dispositional alternatives. I will post a blog about those changes in August. If you would like to read up on them now, you can access my summary of the entirety of S.L. 2024-17 **here**
<<https://nccriminallaw.sog.unc.edu/wp-content/uploads/2024/07/2024-summary.pdf>> .

Changes to existing SOG resources related to juvenile jurisdiction, transfer and removal are in process. This includes a revised Juvenile Law Bulletin on transfer and removal and a revised edition of a juvenile delinquency process flowchart. I will send out information regarding the completed revised materials on our Juvenile Law Listserv. You are welcome to join the Listserv by clicking subscribe on **this page** <<https://www.sog.unc.edu/resources/listservs/recent-nc-court-decisions-juvenile-law-sogjuvenile>>.



Knapp-Sanders Building
Campus Box 3330, UNC Chapel Hill
Chapel Hill, NC 27599-3330
T: (919) 966-5381 | F: (919) 962-0654

© 2023 Copyright, North Carolina Criminal Law at the School of Government with the
University of North Carolina at Chapel Hill