

## 9.10 Appeal of Order of Transfer

---

### 9.10 Appeal of Order of Transfer

**Appeal to superior court.** If the court issues an order transferring the case to superior court, the juvenile may appeal the order to superior court for a “hearing on the record.” G.S. 7B-2603(a). The juvenile must give notice of appeal in open court or in writing within 10 days after entry of the transfer order. The date of entry of the order is determined in the same manner as under Rule 58 of the Rules of Civil Procedure—that is, an order is entered when it is “reduced to writing, signed by the judge, and filed with the clerk of court.” The transfer order must be properly appealed to the superior court to preserve the issue for appeal to the Court of Appeals. If the juvenile fails to properly appeal the order to superior court, any arguments about the transfer order are subject to dismissal. *See State v. Wilson*, 151 N.C. App. 219, 223 (2002) (transfer order not reviewable because juvenile appealed directly to the Court of Appeals instead of appealing to superior court as required by G.S. 7B-2603).

The superior court must review the decision to transfer the case “within a reasonable time” after the juvenile gives notice of appeal. G.S. 7B-2603(a). There are no explicit statutory procedures for the review in superior court, although the use of the term “hearing on the record” indicates that the superior court will review the transcript of the transfer hearing and the juvenile court file. Counsel should be allowed to appear and make arguments based on the record.

The superior court may not reweigh the evidence that the district court considered. *In re E.S.*, 191 N.C. App. 568, 574 (2008). Instead, the superior court must determine whether the district court properly exercised its discretion in transferring the case to superior court. Under an older version of the Juvenile Code, the superior court could only reverse an order transferring a case to superior court for “gross abuse of discretion.” *State v. Green*, 348 N.C. 588, 595 (1998). In contrast, the superior court may reverse a transfer order under the current version of the Juvenile Code “for abuse of discretion” by the district court, which on its face is a less deferential standard. G.S. 7B-2603(a). Cases have held that a court abuses its discretion when it makes an “error of law,” *State v. Rhodes*, 366 N.C. 532, 535 (2013), or when it “refuses to exercise its discretion in the erroneous belief that it has no discretion as to the question presented.” *State v. Lang*, 301 N.C. 508, 510 (1980).

The superior court has two alternatives after the hearing on the record. It may either remand the case to district court for adjudication or uphold the transfer order. G.S. 7B-2603(c).

**Appeal to Court of Appeals.** If the superior court upholds the transfer order, the order may be appealed to the Court of Appeals only if the juvenile is subsequently found guilty in superior court. G.S. 7B-2603(d); *State v. Wilson*, 151 N.C. App. 219, 222 (2002) (juvenile may appeal order of transfer to Court of Appeals only after conviction in

superior court and only if issue was preserved by proper appeal of issue to superior court); *State v. Hatchett*, 177 N.C. App. 812 (2006) (unpublished) (citing *Wilson*).

In addition, G.S. 15A-1444 provides strict limitations on appeals from guilty pleas. Based on those limitations, a juvenile may not challenge a transfer order on direct appeal if the juvenile pled guilty in superior court. *State v. Evans*, 184 N.C. App. 736, 739 (2007) (dismissing appeal because defendant had no right to challenge transfer order under G.S. 15A-1444). To ensure appellate review of a transfer order, the juvenile must take the case to trial.

Although a juvenile does not have the right to direct appeal of a transfer order after pleading guilty in superior court, a juvenile who pleads guilty may challenge the transfer order in a petition for writ of certiorari. In contrast to direct appeals, review by writ of certiorari is “discretionary.” *State v. Hammonds*, 218 N.C. App. 158, 162–63 (2012).

Under Rule 21 of the Rules of Appellate Procedure, review by writ of certiorari is limited and does not include transfer orders. However, Rule 21 “cannot take away jurisdiction given to [the appellate court] by the General Assembly in accordance with the North Carolina Constitution.” *State v. Stubbs*, 368 N.C. 40, 44 (2015). According to G.S. 15A-1444(e), a defendant who has pled guilty and seeks review of issues that are not appealable as of right “may petition the appellate division for review by writ of certiorari.” Consequently, a juvenile may be able to obtain reversal of a transfer order even if the juvenile lost the right to direct appeal of the order by pleading guilty.