

9.9 Procedures for Transfer Hearing

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A. Evidence

The prosecutor and juvenile may be heard and offer evidence at the transfer hearing. Counsel for the juvenile is allowed to examine probation or court records that may be considered as evidence by the court. G.S. 7B-2203(a). Counsel should request to review any such records immediately after being appointed to a case subject to transfer.

Although no appellate court has yet addressed the question of whether the North Carolina Rules of Evidence apply at transfer hearings, the operation of Rules of Evidence 101 and 1101 indicate that they apply. *See, e.g., State v. Foster*, 222 N.C. App. 199, 202–03 (2012) (holding that the Rules of Evidence apply to post-conviction DNA testing proceedings because such proceedings are not listed as excluded under N.C. R. Evid. 1101(b) and no statute bars their application to the proceedings). Counsel should therefore object to evidence presented by the State that would be inadmissible under the Rules of Evidence.

Counsel should request other records pertaining to the juvenile’s level of maturity, mental and emotional status, educational and service needs, or any other factors that might bolster the argument for retaining the matter in juvenile court. Counsel should also consider filing an *ex parte* motion for funds to hire an expert to examine the juvenile in order to develop evidence supporting retention of the case in juvenile court. Sample release forms and a sample motion for an expert witness are available on the [Juvenile Defender website](#).

Unless the juvenile directs counsel to seek transfer, counsel should present evidence against transfer to superior court. Evidence may include the juvenile’s record, performance on court supervision, educational history, mental and emotional state, intellectual functioning, developmental issues, and family history. Witnesses who can provide helpful insight into the juvenile’s character, such as teachers, counselors, psychologists, members of the juvenile’s religious community, family, friends, employers, or other people with a positive personal or professional opinion of the juvenile, may be called to testify.

Community services should also be explored. Counsel should be prepared to offer alternatives for disposition that would not be available if the matter were transferred to superior court.

B. Criteria for Determination

The court must decide whether “the protection of the public and the needs of the juvenile will be served by transfer of the case to superior court” G.S. 7B-2203(b). The statute lists eight criteria for making this determination:

- the age of the juvenile;
- the maturity of the juvenile;
- the intellectual functioning of the juvenile;
- the prior record of the juvenile;
- prior attempts to rehabilitate the juvenile;
- facilities or programs available to the court before the expiration of the court’s jurisdiction and the likelihood that the juvenile would benefit from treatment or rehabilitative efforts;
- whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner; and
- the seriousness of the offense and whether the protection of the public requires that the juvenile be prosecuted as an adult.

G.S. 7B-2203(b)(1)–(8).

The eight statutory criteria are neither weighted nor listed in order of importance for consideration by the court. Counsel should be prepared to argue those factors that support retention of the case in juvenile court as well as to counter the factors most likely to be relied on by the State in seeking transfer. Objections should be raised if the court considers any factors not listed under the statute.

C. Transfer Order

If the court determines that the case should be transferred to superior court, it must enter an order specifying the reasons for transfer. G.S. 7B-2203(c). A transfer of a felony offense also confers jurisdiction on the superior court to try any other offenses arising out of the underlying act or any greater or lesser included offense of that felony. *Id.*; *see also State v. Jackson*, 165 N.C. App. 763, 774 (2004) (superior court had jurisdiction over conspiracy charge that was never filed in district court because the charge was part of transaction that gave rise to other charges properly transferred from district court).

If the court determines that under the statutory criteria the case should be retained in district court, the court must either proceed to an adjudicatory hearing or set a date for adjudication. G.S. 7B-2203(d). If the court proceeds to adjudication, the adjudication must be a separate hearing. *Id.*