

The Nuts and Bolts of Probable Cause and Transfer Hearings

Eric J. Zogry
Juvenile Defender
Office of the Juvenile
Defender
North Carolina

Time Limits

- First appearance for felonies within 10 days of filing the petition, or the next scheduled hearing if the juvenile is in secure custody - [7B-1808\(a\)](#)
- Probable cause within 15 days of first appearance; can be continued for good cause - [7B-2202\(a\)](#)
- If the state is seeking transfer the juvenile should be notified 5 days prior to the probable cause hearing, or the transfer hearing shall be continued - [7B-2202\(e\)](#)

Procedural Safeguards that Apply

- Open hearings – 7B-2402
- Shackling – 7B-2402.1
- Recording of proceedings – 7B-2410

Probable Cause: The Basics

- Court shall conduct a hearing in all felony cases
- Juvenile was 13 or older at the time of the offense
- Counsel may waive in writing the right to the hearing and stipulate to a finding of probable cause

7B-2202(a) and (d)

Probable Cause: The Basics

- Standard: There is probable cause to believe that:
 - The offense charged has been committed AND
 - The juvenile committed the offense

7B-2202(c)

Probable Cause: Evidence

- Juvenile may testify, call and examine witness and present evidence
- State must meet burden by nonhearsay evidence, or evidence that satisfies an exception to the hearsay rule
- Exceptions
 - Scientific, professional, or medical expert reports
 - If no “serious contest,” reliable hearsay to prove value, possession, ownership, chain of custody and authentication of signatures

7B-2202(c)

If Probable Cause is Found...

- If a Class A felony (first degree murder), court shall transfer the case – 7B-2200
- If any other felony, court shall either proceed to transfer or set a date for transfer – 7B-2202(e)

If Probable Cause Not Found...

- Court shall dismiss the proceeding OR
- If the court finds probable cause on a misdemeanor, either proceed to an adjudicatory hearing or set a date for that hearing

7B-2202(f)

Probable Cause Caveats

- Certain felonies may be diverted –
7B-1701, 7B-1706
- Fingerprints/photographs must be destroyed if no finding of probable cause – 7B-2102(e)
- Jeopardy does not attach at probable cause
7B-2414, In re Bullard, 22 N.C. App. 245 (1974)

Transfer: The Basics

- Juvenile 13 or older at the time of the offense
- Prosecutor, court, or juvenile's attorney may move for transfer
- Transfer hearing occurs after notice, hearing and finding of probable cause

7B-2200

Transfer: Evidence

- Both prosecutor and juvenile may be heard and may offer evidence
- Attorney may examine any court or probation records, or other records the court may consider in determining transfer

7B-2203(a)

Transfer: Standard

- Whether the protection of the public and the needs of the juvenile will be served
- Court shall consider eight factors:
 - Age
 - Maturity
 - Intellectual functioning
 - Prior record
 - Prior attempts to rehabilitate
 - Facilities or programs available and likely benefits
 - Whether offense committed in an aggressive, violent, premeditated or willful manner
 - Seriousness of the offense/protection of the public

7B-2203(b)

If Transferred...

- Superior court has jurisdiction over
 - the felony transferred
 - any offense based on the same act(s) or transaction(s) within the plan or scheme of the felony AND
 - Any greater or lesser included offense of the felony

7B-2203(c)

If Not Transferred...

- Proceed to an adjudicatory hearing OR
- Set a date for the hearing

7B-2203(d)

Release/Detention if Transferred

- Right to bail
- Juvenile shall be held in a detention facility (usually Richmond County)
- Or holdover facility if juvenile needs to be in court and it's inconvenient to return to detention
- Credit for time served applies (?)

7B-2201

Jurisdictional Limo

- If juvenile turns 18 and:
 - if proceedings can't be concluded
 - or jurisdiction over a juvenile in a felony matter can't be obtained
 - Court has jurisdiction to determine probable cause, and shall either:
 - Transfer the case
 - Dismiss the petition
- 7B-1601(c) and (d)

Consequences of Transfer

- Once transferred, juvenile always charged as an adult – 7B-1604(b)
- Schools are notified – 7B-3101(a)(2)
- Juvenile is fingerprinted and photographed – 7B-2201
- Law enforcement files can be kept with adult files and are not withheld from public inspection – 7B-3001(b)

Appeal of Transfer

- Notice in open court or in writing within 10 days after entry of the order
 - Appeal to the superior court, which shall review within a reasonable time
 - Standard:
 - Abuse of discretion
 - Shall not review probable cause
 - Superior court shall either:
 - Remand the case to juvenile court for adjudication
 - Uphold the transfer order
- 7B-2603(a) and (c)

Appeal of Transfer

- Superior court order is interlocutory, issue may be appealed to the Court of Appeals after conviction – [7B-2603\(d\)](#)
- Right of appeal to Court of Appeals is waived if not first appealed to superior court, [State v. Wilson](#), 151 N.C. App. 219 (2002)
- No right of appeal to Court of Appeals upon a plea of guilt, [State v. Evans](#), 184 N.C. App. 736 (2007)
- Superior court may only review for abuse, not substitute its judgment for that of the district court, [In re E.F.S. Jr.](#), No. COA07-1054 (2008)