

Getting Beyond the Checkboxes: Delinquency Dispositional Orders

Dispositional decision making in delinquency cases can be complex. A list of 24 dispositional alternatives are available pursuant to [G.S. 7B-2506](#). The choice among them must be driven by the disposition level allowed by [G.S. 7B-2508](#) and the five factors outlined in [G.S. 7B-2501\(c\)](#). How much information must a court consider in making this decision and what findings need to be in an order of disposition? That question was not clearly answered until May of 2018.

G.S. 7B-2501(c) requires that courts impose dispositions that fall within the statutorily prescribed level system and that protect the public and “meet the needs and best interests of juveniles, based upon:

- (1) The seriousness of the offense;
- (2) The need to hold the juvenile accountable;
- (3) The importance of protecting the public safety;
- (4) The degree of culpability indicated by the circumstances of the particular case; and
- (5) The rehabilitative and treatment needs of the juvenile indicated by a risk and needs assessment,”

How these statutory requirements translate into practice was a point of confusion prior to May 2018 when the court of appeals published [In re I.W.P., 815 S.E.2d 696 \(May 1, 2018\)](#). The holding in this case resolved conflicting decisions and made it clear that the court must address each of the five factors listed above in an order of disposition.

Requirement to address all five factors in G.S. 7B-2501(c)

Beginning with the decision in [In re Ferrell, 162 N.C.App. 174 \(January 6, 2004\)](#), the court of appeals developed a body of case law that emphasizes the importance of consideration of each of the statutory factors. At issue in *In re Ferrell* was an order of disposition that transferred custody of the juvenile to the father based solely on the fact that the juvenile has missed forty days of school. The court held that consideration of this one factor alone was not sufficient.

Three additional cases built on the need to make findings related to the 7B-2501(c) factors, relying on the precedent set in *In re Ferrell*. In [In re V.M., 211 N.C.App. 389 \(April 19, 2011\)](#) the court of appeals held that a dispositional order on which pre-printed boxes were checked indicating that the juvenile was adjudicated for a violent or serious offense, a level 3 disposition was authorized, and

that the court had received, considered, and incorporated by reference the predisposition report, risk and needs assessment did not adequately address all of the G.S. 7B-2501(c) factors.

The court of appeals also found the findings of fact on the disposition order insufficient in [In re K.C., 226 N.C.App. 452 \(April 16, 2013\)](#). Here, an order with an offense categorized as minor and courtroom discussion of both the needs for the juvenile to understand the significance of victimizing others and a “report” that was not described in any way or provided on appeal was not sufficient.

The court did subsequently offer an example of a dispositional order that adequately addressed all five factors in [In re G.C., 230 N.C.App. 511 \(November 19, 2013\)](#). The order made several written findings that included:

- that the offense was premeditated, willful, and extremely serious, speaking to factors (1) and (4);
- that the juvenile continued to deny the allegations, had indicated that sex offender treatment would not benefit him, and that he had symptoms of ADHD, speaking to factors (2) and (5); and
- that the juvenile’s family still lived next to the victim and that the two families had an ongoing relationship, speaking to factor (3).

The need to address each of the five statutory factors established through this line of cases was subsequently contradicted by the court of appeals in [In re D.E.P. 796 S.E.2d 509 \(February 7, 2017\)](#). The court explicitly held that the holding in *Ferrell* had been mischaracterized in the cases that followed and that the trial court is not required to make findings of fact that expressly track each of the G.S. 7B-2501(c) factors, especially factors that are not relevant to the particular case or for which no evidence was introduced.

This new holding in *In re D.E.P.* created a direct conflict with *Ferrell, V.M., K.C.*, and *G.C.* The court of appeals addressed this conflict directly in *I.W.P.*, holding that *Ferrell* and its progeny control, as direct conflicts in jurisprudence must be resolved by following the older of the two lines of cases. In upholding *Ferrell* and its progeny, the court restored the requirement that each factor in G.S. 7B-2501(c) must be considered when entering a dispositional order.

How much is enough?

While it is now clear that dispositional orders must address each of the five factors in G.S. 7B-2501(c), question may remain regarding what findings are sufficient to satisfy this requirement. A body of largely unpublished decisions points to some themes.

Check boxes are often not enough

The juvenile disposition forms provided by the Administrative Office of the Courts ([AOC-J-461](#),

[AOC-J-475](#), [AOC-J-462](#), [AOC-J-468](#)) include pre-printed check boxes to address many, but not all, of the findings required to determine the appropriate disposition. They also include a large blank area for other findings with a note inviting statement of any findings regarding the five G.S. 7B-2501(c) factors. Several cases have held that simply checking the pre-printed boxes is not sufficient to address all the factors required by G.S. 7B-2501(c). *V.M.*, [In re R.D. 223 N.C.App. 210 \(October 16, 2012\)](#), [In re D.T.F. 215 N.C.App. 389 \(September 6, 2011\)](#). These decisions emphasize the importance of providing other findings regarding the statutory factors in the blank area below the note.

Findings about other facts are not enough

The court has repeatedly asserted that written findings of fact in dispositional orders need to specifically speak to the enumerated factors. For example, written findings in [In re J.C. 195 N.C.App. 785 \(March 17, 2009\)](#) that included place of commitment, acknowledgement that the juvenile had made progress in the MRT program, and that the juvenile was fingerprinted and photographed and entered a notice of appeal were not sufficient because they did not address any of the five statutory factors. The court has also held that findings of only the delinquency history level and the fact that the predisposition report and risk and needs assessment were considered and incorporated into the order do not sufficiently address all five factors. *R.D.*

Predisposition reports with risk and needs assessments are relevant to the factor analysis

Several unpublished decisions have found the information provided in the predisposition report and risk and needs assessment to be relevant to consideration of some of the G.S. 7B-2501(c) factors, and, if these reports are incorporated into the order, can serve as relevant findings of fact. Facts such as risk level, school behavior issues, lack of adequate parental supervision, unmet substance abuse needs, and the youth's readiness for drastic change included in predisposition reports that were incorporated into dispositional orders have all been found to support the trial court's consideration of the rehabilitation and treatment needs of the juvenile (factor 5). See [In re D.O.B., 213 N.C.App. 422 \(July 9, 2011\)](#) and [In re R.A.T., 189 N.C.App. 530 \(April 1, 2008\)](#).

It is critical that a predisposition report and risk and needs assessment received and reviewed by the court is explicitly incorporated into the order of disposition and provided as part of any appeal. Several cases have been remanded for new dispositional findings because the box indicating that the predisposition report was incorporated into the order was not checked. See [In re J.P.M., 184 N.C.App. 188 \(June 19, 2007\)](#), [In re M.A.R., 189 N.C.App. 209 \(March 4, 2008\)](#), and [In re K.D.A., 191 N.C.App. 251 \(June 17, 2008\)](#). Both *K.C.* and [In re J.M.C., 793 S.E.2d 285 \(November 15, 2016\)](#) were remanded in part because reports that were referenced were not provided to the court on appeal.

The bottom line

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While each case presents its own unique set of facts that are relevant to the factors in G.S. 7B-2501(c), it is clear that dispositional orders should contain sufficient written findings of fact to show that all five factors were considered when making a dispositional decision. Some of the pre-printed information on the forms is helpful to this end and use of those check boxes, as well as provision of relevant written findings in the blank box provided, is key. In addition, predisposition reports with risk and needs assessments should be clearly incorporated into the order and provided to the court for any appellate review.