

What Adjudications Count When Determining a Juvenile's Delinquency History Level

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One of the most important factors affecting a juvenile court disposition is the juvenile's delinquency history level, which in turn depends primarily on the juvenile's prior delinquency adjudications. The delinquency history level (low, medium, or high), combined with the classification of the current offense, determines which dispositional alternatives are available in a particular case. [G.S. 7B-2508](#). The higher the delinquency history level, the greater the consequences for the juvenile. Obviously, it's important for the court to get it right. Based on recent advising requests, there is some confusion about what counts as a prior adjudication and what happens when there are multiple adjudications before the court. A recent appellate decision addressed one of these questions. Here's a breakdown of the case, as well as new legislation in response, which will change the analysis.

- **What is a Prior Adjudication?**

A juvenile's delinquency history level is determined in large part by calculating the total points assigned to the juvenile's prior adjudications. (The juvenile's probation status at the time of the offense also counts, which will be discussed in a later blog post). [G.S. 7B-2507](#). A "prior adjudication" is not defined in the Juvenile Code, but the Court of Appeals answered one question about the meaning of that term in [In re P.Q.M.](#), ___ N.C. App. ___, 754 S.E.2d 431 (2014). In that case, the juvenile was adjudicated delinquent during three separate sessions of juvenile court that occurred on January 5, 2012, November 29, 2012, and December 3, 2012. No disposition had been entered in any case. So, the juvenile's delinquency history looked like this:

Offense	Adjudication Date
Communicating Threats	January 5, 2012
Robbery with a Dangerous Weapon (RWDW)	November 29, 2012
Larceny of a Firearm	December 3, 2012

All three adjudications were calendared for disposition on March 4, 2013. The court entered a disposition order based on RWDW, the most serious offense for which the juvenile had been adjudicated, and found the juvenile had two prior adjudications for communicating threats and larceny of a firearm. The RWDW offense constituted a "violent" offense, the most serious classification in the Juvenile Code, and the two other adjudications placed the juvenile at a "medium" delinquency history level. The dispositional chart, therefore, prescribed a Level 3 disposition, [G.S. 7B-2508\(f\)](#), which authorized the trial court's commitment of the juvenile to a youth development center. *P.Q.M.*, 754 S.E.2d at 433.

On appeal, the juvenile argued that the larceny adjudication was not a prior adjudication because it occurred after his adjudication for RWDW. Finding that a prior adjudication is analogous to a prior conviction, defined by [G.S. 15A-1340.11\(7\)](#), the court held the larceny adjudication was a prior adjudication because it occurred before the disposition hearing and entry of the disposition. *P.Q.M.*, 754 S.E.2d at 435. Thus, under *P.Q.M.*, any adjudication that exists prior to the disposition hearing is a prior adjudication for purposes of determining a juvenile's delinquency history level . . . at least for now.

- **The Current Offense Is not a Prior Adjudication**

A matter that was not at issue in *P.Q.M.* is the treatment of the current offense (i.e., the offense for which disposition is ordered), but it is an issue I often discuss with practitioners and judges. No delinquency history points are assigned for the current offense. Although no appellate decision has directly addressed the issue, it would be unreasonable to infer that the legislature intended for the “current” offense to be counted as part of the juvenile’s delinquency “history.” To quote a juvenile court counselor who recently consulted me about this topic, “today is not history.” However, the classification of the current offense as minor, serious, or violent under G.S. 7B-2508(a) *is* a relevant factor in determining the juvenile’s disposition level pursuant to the dispositional chart.

- **The Definition of “Prior Adjudication” Changes on December 1, 2015**

Change is coming in the form of [HB 879](#) (“Juvenile Code Reform”), which was quickly approved and ratified by the General Assembly this session and is currently awaiting Governor McCrory’s signature. Along with several other changes to the Juvenile Code, it reverses the holding of *P.Q.M.* by amending G.S. 7B-2507(a) to define a prior adjudication as “an adjudication of an offense that occurs **before the adjudication of the offense before the court.**” HB 879, sec. 2.3. Unless vetoed, the new law will become effective December 1, 2015, and apply to offenses committed on or after that date.

Under this new definition, the juvenile’s only prior adjudication in *P.Q.M.* would have been for the Class 1 misdemeanor of communicating threats (adjudicated before the RWDW adjudication), giving him a “low” delinquency history level and making him eligible for a Level 2 disposition. (Commitment to a youth development center is not authorized for a Level 2 disposition.)

- **Must Disposition Always Be Based on the Most Serious Offense?**

The answer is no. A contrary assumption probably comes from [G.S. 7B-2508\(h\)](#), which states:

If a juvenile is adjudicated of more than one offense during a session of juvenile court, the court shall consolidate the offenses for disposition and impose a single disposition for the consolidated offenses. The disposition shall be specified for the class of offense and delinquency history level of the most serious offense.

As indicated by the italics, this statute only applies to multiple adjudications obtained during a single session of juvenile court, which requires the court to consolidate the offenses for disposition. The Code is silent regarding the scenario in *P.Q.M.*, which involved multiple adjudications that occurred in *separate* sessions of juvenile court. *See P.Q.M.*, 754 S.E.2d at 434 (trial court not required to consolidate adjudications that occurred in separate sessions of juvenile court). In such situations, the court is not required to enter the disposition based on the most serious offense and can exercise its discretion to enter the most appropriate disposition.

I’m interested to know if people have other questions about delinquency history levels. If so, please share! I will follow up with additional posts on recurring issues.