

#### A. How Many Youth Are Affected?

Studies show that 65% to 70% of youth in contact with the juvenile justice system have a diagnosable mental health disorder, substance use disorder, or both. The purpose of this session is to educate North Carolina district court judges about effective responses to the treatment needs of these youth using the resources and dispositional alternatives authorized by the North Carolina Juvenile Code.

#### Did You Know:

- *Youth in the JJS experience mental health disorders at a rate that is >3x greater than that of the general youth population.*
  - 20% of all U.S. children (1 in 5) have a diagnosable mental health disorder.
  - Up to 70% of youth in the JJS have a diagnosable mental health disorder.
  - >60% of these youth have a co-occurring substance use disorder.
  - 30% of these youth are in urgent need of mental health treatment.
- *Most youth in the JJS have experienced some degree of trauma.*
  - Early childhood trauma affects brain development and increases the risk of mental health disorders.
  - 75% of youth entering the JJS have experienced some degree of trauma.
  - 93% of incarcerated youth have experienced at least one traumatic event.
  - Most of that 93% have experienced 6 or more traumatic events.
- *Youth in the JJS have an increased risk of suicide than the general youth population.*
  - Mental health and/or substance use disorders increase the risk of suicide.
  - Suicide rate of incarcerated youth is 3x higher than the general youth population.
  - Suicide is the leading cause of death for youth in confinement.
- *Two-thirds of U.S. detention facilities hold juveniles who are awaiting community mental health services.*
  - Approx. 2,000 youth are incarcerated every day because community mental health services are unavailable.
  - These youth are typically detained longer than other juveniles.
  - 27% of juvenile detention facilities that hold youth awaiting services report having poor or no mental health treatment for juveniles.

#### Resources:

1. Juvenile Justice Information Exchange. <http://jjie.org/hub/mental-health-and-substance-abuse/>
2. Mental Health and Juvenile Justice Collaborative for Change: *Better Solutions for Youth with Mental Health Needs in the Juvenile Justice System*, Jan. 22, 2014.
3. U.S. House of Representatives Committee on Government Reform—Minority Staff Special Investigation Division, *Incarceration of Youth Who Are Waiting for Community Mental Health Services in the United States*, July 2004.

## B. When Can Mental Health Information Be Shared?

1. **With the Court.** Generally, confidential information about juveniles gathered by juvenile court counselors during intake, including medical, psychiatric, psychological, substance abuse, and educational history, may not be disclosed by court counselors to the court prior to an adjudication of delinquency. G.S. 7B-2413. Such information is summarized in a predisposition report, which must not be considered by the court until the completion of an adjudication hearing. Also, to protect a juvenile's constitutional privilege against self-incrimination, statements made by juveniles during intake are not admissible at an adjudication hearing. G.S. 7B-2408. Thus, court counselors should refrain from disclosing mental health information about juveniles to the court prior to adjudication.

However, other parties, including the juvenile, the juvenile's attorney, or the prosecutor, may disclose mental health information about the juvenile to the court during pre-adjudication proceedings in which the juvenile's mental health is an issue, such as secure custody, transfer, or capacity to proceed hearings.

2. **Interagency Sharing About Juveniles.** In limited circumstances, the Juvenile Code requires designated agencies, including juvenile justice agencies and local management entities (LME's), to share confidential information about juveniles that is relevant to any case in which a petition is filed alleging that a juvenile is undisciplined or delinquent. G.S. 7B-3100. However, there are three important limitations to this requirement: the information shared must (1) remain confidential, (2) be withheld from public inspection, and (3) be used only for the protection of the juvenile and others or to improve the educational opportunities of the juvenile. Also, information sharing pursuant to this statute must comply with applicable federal laws and regulations governing health, substance abuse, and educational records. The complete list of designated agencies, as provided by 14B NCAC 11A .0301, includes:

- NC Department of Public Safety, Juvenile Justice Section;
- Office of Guardian Ad Litem Services of the Administrative Office of the Courts;
- county departments of social services;
- area mental health, developmental disability, and substance abuse authorities;
- local law enforcement agencies;
- district attorney's offices;
- county mental health facilities, developmental disabilities and substance abuse programs;
- local school administrative units;
- local health departments; and
- a local agency designated by an administrative order of a chief district court judge

Currently the law applies only to those mental health and developmental disabilities service providers designated by an administrative order issued by the chief district court judge of the district court district in which the provider is located because the administrative regulation does not include providers of mental health and developmental disabilities services among the list of designated agencies. And, this law does not permit

the sharing of substance abuse treatment information. When disclosing any mental health or developmental disabilities information pursuant to this law, if any substance abuse treatment information also appears in the records, that information must be redacted before the records are disclosed.

For more information about sharing confidential information about juveniles, please consult the *North Carolina Juvenile Justice Behavioral Health Information Sharing Guide*, available at the School of Government's website.

## C. What Are Some Appropriate Dispositional Options?

### 1. Diversion Plans and Contracts (G.S. 7B-1706)

Whenever safe and appropriate, youth with mental health and substance use needs should be diverted from the juvenile justice system (JJS) to community based treatment and services. Research shows that youth who are served in their own communities through evidence-based treatment practices have better outcomes than those who are adjudicated delinquent and subsequently incarcerated. Diversion options can include referrals to a variety of community services, such as:

- Clinical Evaluation and Psychological Assessment
- Mental Health Treatment
- Substance Abuse Counseling
- Individual and Family Counseling
- Mediation and Conflict Resolution
- Mentoring and Tutoring
- Interpersonal Skill Building
- Juvenile Structured Day Programs

### 2. Options for Juveniles Who Are Adjudicated Delinquent

Diversion is not an option for every juvenile with mental health needs. The Juvenile Code does not authorize diversion, if the offense is non-divertible, *see* G.S. 7B-1701. Also, diversion may not be appropriate based on the particular needs of the juvenile or public safety concerns. However, even for adjudicated juveniles, there are many available dispositional options for youth with mental health or substance use needs.

#### a) Dismissal or Continuance: G.S. 7B-2501(d)

At the dispositional hearing in any case, the court may: (1) Dismiss the case, or (2) Continue the case for up to 6 months to give the family an opportunity to meet the juvenile's needs through:

- More adequate supervision at home,
- Placement in a private or specialized school or agency,
- Placement with a relative, or
- Some other plan approved by the court.

b) Evaluation and Treatment: G.S. 7B-2502

In every case, the court may order: (1) Examination of the juvenile by an expert; (2) Medical, surgical, psychiatric, psychological, or other evaluation or treatment for the juvenile; and (3) Testing of the juvenile for controlled substances or alcohol (required if the adjudication is for an offense that involves possession, use, sale, or delivery of alcohol or drugs).

**Arrangement of Evaluation & Treatment.** The court must first allow the juvenile's parent or guardian to arrange for evaluation and treatment. The court may order the court counselor or juvenile's attorney to assist the parent with selecting an appropriate expert. If the parent refuses or is unable to make the arrangements, the court may then order the needed evaluation or treatment.

**Cost of Treatment.** If the court finds the parent or guardian is unable to pay, the court must order the county to arrange and pay for the cost of the needed evaluation or treatment. However, the county manager, or other designated county official, must receive notice and an opportunity to be heard. If the court orders to the county to pay, the county department of social services must recommend the facility that will provide the evaluation or treatment.

*See In re Voight*, 138 N.C. App. 542 (2000) (county had no right to appeal the trial court's order that county pay \$658.74 for the cost of a juvenile's mental health evaluation).

**Mental Illness or Developmental Disability.** If there is evidence that the juvenile is mentally ill or developmentally disabled, the court must refer the juvenile to the local mental health, developmental disabilities, and substance abuse services director (local management entity (LME) director) for an interdisciplinary evaluation and the mobilization of resources to meet the juvenile's needs.

**Inpatient Treatment.** The court may never commit the juvenile directly to a state hospital or mental retardation center. Except for purposes of an evaluation of the juvenile's competence to proceed, a juvenile's admission to a state hospital must be by consent of a parent or guardian or by way of an involuntary commitment proceeding. However, if the LME recommends inpatient admission and the parent refuses to consent, the court may provide its signature to consent to the juvenile's admission.

c) Level 1 (Community) Dispositions: G.S. 7B-2506(1)-(13), (16)

- Community based treatment program
- Intensive substance abuse treatment program
- Residential or non-residential treatment program
- Victim-offender reconciliation program
- Juvenile structured day program
- Probation (with related conditions): G.S. 7B-2510
  - Prohibit possession of controlled substances and alcohol
  - Substance abuse monitoring and treatment
  - Compliance with treatment recommended by expert
  - Random drug testing

d) Level 2 (Intermediate) Dispositions: G.S. 7B-2506(13)-(23)

- Placement in residential treatment facility, intensive non-residential treatment program, intensive substance abuse program, or group home
- Intensive probation w/ related conditions
- Juvenile structured day program
- Placement in state-operated multi-purpose group home
- **Suspension of a more severe disposition.** The court may suspend a more severe, authorized disposition on the condition that the juvenile satisfy certain conditions agreed to by the juvenile. The court should consider this option to try community based treatment and services before ordering out-of-home placement for a juvenile with mental health or substance use needs.

e) Level 3 (Commitment) Dispositions: G.S. 7B-2506(24)

Although commitment to a youth development center (YDC) is the only dispositional alternative provided for a Level 3 disposition, there are some exceptions. Because community based treatment has been determined to be more effective than incarceration for juveniles with mental health disorders, the court should first consider these options:

- **Extraordinary Needs Finding.** In any case in which the dispositional chart prescribes only a Level 3 disposition, the court may, instead, order a Level 2 disposition based upon written findings substantiating that the juvenile has extraordinary needs. “Extraordinary needs” has not yet been defined by statute or case law. However, the court has discretion to make this finding based upon the facts and circumstances of each particular case. G.S. 7B-2508(e).
- **Community Commitment.** If the court commits a juvenile to a YDC, the Division, after assessment, may provide commitment services to the juvenile in a community setting, rather than a YDC. Some options for a community placement might include a psychiatric residential treatment facility (PRTF), secure multi-purpose group home, or wilderness camp. The Division must file a motion with the court with information about the recommended services, prior to the placement, and provide notice to the prosecutor, the juvenile, and the juvenile’s attorney. The court may enter an order approving a community placement, without a hearing, unless the juvenile requests a hearing. G.S. 7B-2513(e).

### 3. Options for Juveniles Who Lack Capacity to Proceed

If the court determines a juvenile lacks the capacity to proceed, as defined by G.S. 15A-1001, no adjudicatory or dispositional proceeding may be held. *See* G.S. 7B-2401, G.S. 15A-1001, -1002, and -1003. However, beyond initiating a civil commitment proceeding, the Juvenile Code does not provide any guidance or options for juveniles who are found incapable of proceeding. The following are some suggested options for the court, within the parameters of the Juvenile Code.

a) Non-Secure Custody v. Secure Custody: G.S. 7B-1903(a)

In some cases, the court may decide to order a subsequent capacity examination in order to consider opinions from multiple experts before determining the issue of the juvenile's capacity to proceed. In such cases, if the juvenile is being held in secure custody, the court should consider a non-secure custody placement pending the capacity hearing. If non-secure custody is ordered, the court must first consider a kinship placement, if a relative is willing and able to provide proper care and supervision. If a kinship placement is not in the juvenile's best interests, the juvenile may be placed in the custody of the county department of social services for placement in a licensed foster home, a facility operated by DSS, or any other home or facility approved by the court. G.S. 7B-1905. If the court releases a juvenile from secure custody to a non-secure placement, it may also place appropriate restrictions on the juvenile's liberty, pursuant to G.S. 7B-1906(f).

b) Diversion: G.S. 7B-1706

If appropriate, the juvenile court counselor should consider whether a juvenile who lacks the capacity to proceed can benefit from a referral to available community based resources through a diversion plan or contract. In order to facilitate the diversion, the State may need to voluntarily dismiss the petition to allow the complainant to file a new complaint with the Division of Juvenile Justice, so that a new intake evaluation may be performed. If jeopardy did not attach in the prior proceeding (which only occurs when the court begins to hear evidence at an adjudication hearing), a court counselor will still have the option of re-filing the complaint as a juvenile petition, if the diversion is unsuccessful.

In cases where a juvenile is originally charged with a non-divertible offense, the State should consider reducing the charge to a lesser, divertible offense, if diversion is appropriate.

c) Referral to a Local Management Entity (LME)

Evaluation and treatment cannot be court-ordered, if a juvenile lacks the capacity to proceed, because the court has no authority to enter a disposition. However, the court can refer a juvenile to the local management entity in the juvenile's area and allow the LME to arrange for the juvenile's evaluation and/or treatment, if authorized by the LME. The court should seek assistance from the juvenile court counselor and/or the juvenile's attorney in making the referral.

d) Civil Commitment: G.S. 15A-1003

The court may refer a juvenile who is found incapable of proceeding for civil commitment proceedings, pursuant to G.S. 15A-1003.

**Temporary custody order.** Upon written findings supporting "reasonable grounds to believe" the juvenile meets criteria for involuntary commitment, the court can issue a temporary custody order to a law enforcement agency to take the juvenile into custody within 24 hours and transport the juvenile to a local doctor or psychologist for an initial

commitment examination. If the juvenile is alleged to have committed a violent offense, including an assault with a deadly weapon, the order must indicate such and require that the juvenile be taken directly to a 24-hour facility for temporary custody, examination, and treatment pending a civil commitment hearing. Statutory forms (AOC-SP-304A and AOC-SP-304B) are available for the court to use for entry of the temporary custody order. However, these forms were developed for use in criminal proceedings and must be amended appropriately, if used for juveniles. The court may also create its own order.

**Custody Pending Civil Commitment Hearing.** Once the court enters a temporary custody order initiating a civil commitment exam, the matter becomes a civil commitment proceeding under Chapter 122C of the General Statutes, and further hearings will be held in that court. However, pending the civil commitment proceeding, the juvenile court is authorized to enter appropriate orders regarding the temporary custody of the juvenile, *see* G.S. 15A-1003(b). Secure or non-secure custody, pursuant to the criteria in G.S. 7B-1903, may be ordered pending the hearing.

**Civil Commitment Options.** Referral of a juvenile for civil commitment proceedings does not necessarily mean the juvenile will be institutionalized. The examining physician must recommend one of three options to the civil commitment court: (1) Outpatient commitment, (2) Inpatient commitment, or (3) Neither. G.S. 122C-263(d).

- Outpatient commitment must be recommended if the examiner finds the juvenile is (1) mentally ill, (2) capable of surviving safely in the community with supervision from family or others, (3) has a psychiatric history that will deteriorate if not treated and will result in dangerousness, and (4) the juvenile's current mental status or illness limits the juvenile's ability to voluntarily seek or comply with recommended treatment.
- Inpatient commitment must be recommended only if the examiner finds the juvenile is (1) mentally ill, and (2) dangerous to self or others.
- If the examining physician finds the juvenile satisfies neither the conditions for outpatient nor inpatient commitment, the proceedings will be terminated.

#### **D. Pitfalls to Avoid When Drafting Court Orders**

1. **Ask for a "Comprehensive Clinical Assessment."** A comprehensive clinical assessment is an intensive evaluation of an individual's mental health, developmental disability, and/or substance use needs which results in specific recommendations about all identified clinical needs. When a court order requests a "psychological evaluation," it will result in a more narrow assessment of the child's psychological needs, which must be performed by a licensed psychologist. However, a comprehensive clinical assessment may be performed by other qualified mental health professionals. Thus, to obtain a broader assessment of the juvenile's clinical needs, the court should ask for a comprehensive clinical assessment, rather than a psychological evaluation.

2. **Allow the Parent or Guardian to Arrange for Treatment.** Pursuant to G.S. 7B-2502, the court must first give the juvenile’s parent or guardian an opportunity to arrange for needed evaluation or treatment. Allowing the parent to make these decisions not only complies with the law, but it is also consistent with the “system of care” model practiced by mental health professionals, which engages juveniles and their families in the decision-making process. Because juveniles with behavioral health needs are frequently involved with multiple agencies, there may be a provider who is already familiar with the juvenile who can perform the needed services. Therefore, the court should draft the order in a way that gives the parent or guardian discretion to choose an appropriate provider to perform the needed evaluation or treatment.
  
3. **Don’t Name the Provider.** In some cases, the language used in the court’s order may be too specific when ordering mental health evaluation or treatment. Although the court may not delegate its authority to court counselors (or others) to determine the type of treatment for a juvenile, it can give others discretion to determine the details of the treatment ordered, such as choosing the treatment provider or facility.

Although an assessment may recommend a particular treatment for a juvenile, as well as a provider, Medicaid will not cover the cost of the treatment, unless it is approved by an LME. It is possible for an LME to approve the recommended treatment but deny the provider. Therefore, specifying the provider in the court order may hinder the juvenile from receiving the recommended treatment or result in the juvenile’s family or the county being required to pay for it.

#### Sample Valid Court Orders:

- The juvenile shall cooperate with an out of home placement “as directed by New River Behavior Health Care.”

*In the Matter of V.A.L.*, 187 N.C. App. 302 (2007) (where the trial court ordered as a condition of probation that the juvenile was to cooperate with an out of home placement *without designating the placement*, there was no improper delegation because the trial court made the determination that an out of home placement was necessary, but simply left the specific details to the court counselor).

- The juvenile shall “cooperate and participate in a residential treatment program as directed by a court counselor or mental health agency.”

*In the Matter of M.A.B.*, 170 N.C. App. 192 (2005) (the court did not improperly delegate its authority by ordering juvenile to cooperate with placement in a residential or nonresidential treatment program as directed by juvenile court counselor or mental health agency, since the court ordered participation in the program but allowed others to determine the specifics).



### Sample Invalid Court Orders:

- The juvenile shall “cooperate with any out of home placement if deemed necessary, or if arranged by the court counselor, including, but not limited to, a wilderness program.”

*In re S.R.S.*, 180 N.C. App. 151 (2006) (the court improperly delegated its authority to the juvenile court counselor because the court left the determination of whether the juvenile would participate in an out-of-home placement to the counselor).

- The juvenile shall “cooperate with placement in a residential treatment facility if deemed necessary by MAJORS counselor or Juvenile Court Counselor.”

*In re Hartsock*, 158 N.C. App. 287 (2003) (the court improperly delegated its authority to court counselor or counselor from treatment program to place the juvenile in a residential treatment facility).

4. **Order Disclosure of Mental Health and Substance Abuse Records.** Generally, a subpoena, alone, does not permit the disclosure of mental health, developmental disability, and substance abuse records. State and federal laws governing the privacy of such information generally permit disclosure only when a court order specifically requires disclosure, the patient has provided authorization to disclose, or the disclosure is required by law under the circumstances. Therefore, when the court orders evaluation or treatment for a juvenile, it should also order that the provider disclose relevant information about the juvenile’s evaluation or treatment to the court.
5. **Juvenile’s Admission Cannot Be Court-Ordered.** If the juvenile denies the allegations at the adjudication hearing, the court may not order the juvenile to admit responsibility during treatment. *See In the Matter of T.R.B.*, 157 N.C. App. 609 (2003) (following an adjudication for first-degree sex offense, the juvenile was ordered to participate in and successfully complete sex offender specific treatment and evaluation as a condition of probation. The disposition order defined “participation” as attendance at all meetings, *admission of responsibility for offense*, and progress towards reasonable treatment goals. The juvenile had testified at trial and denied the allegations. The Court of Appeals reversed the adjudication, holding that the court violated the juvenile’s 5<sup>th</sup> Amendment rights by conditioning probation on the juvenile’s express admission of the offense.).