



North Carolina Criminal Law Blog

June 25, 2024

The Court's Obligation to Determine Disposition in a Delinquency Matter

Jacquelyn Greene

Is the court bound to order a certain disposition in a delinquency matter when the juvenile and the prosecutor agree to that disposition as part of an agreement? The short answer is no. The Juvenile Code requires the court to engage in certain procedures, to consider certain factors, and to order disposition in accord with certain parameters when developing and ordering a delinquency disposition. The mandates on the court cannot be delegated to the parties and they are not optional. This post describes these mandates and explores the implications for dispositional outcomes that are agreed upon by the juvenile and the prosecutor.

Statutory Mandates Requiring the Court to Develop the Disposition

Article 25 of Chapter 7B of the General Statutes governs disposition in delinquency matters. The purpose of the disposition “is to design an appropriate plan to meet the needs of the juvenile and to achieve the objective of the State in exercising jurisdiction, including the protection of the public.” **G.S. 7B-2500**. The statute goes on to direct that “The **court** should develop a disposition in each case” that promotes public safety, emphasizes accountability of the juvenile and their parent, and provides appropriate consequences, treatment, training, and rehabilitation to help the juvenile become a nonoffending, responsible, and productive community member. **G.S. 7B-2500** (emphasis added).

The Juvenile Code also includes specific guidance on how a disposition should be selected. The statute clearly requires the **court** to “select the most appropriate disposition both in terms of kind and duration for the delinquent juvenile.” **G.S. 7B-2501(c)**. The **court** is also mandated to select a disposition within the statutorily permissible options “that is designed to protect the public and to meet

the needs and best interests of the juvenile, 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.” The North Carolina Court of Appeals held that the trial court must consider each of these five factors when entering a dispositional order. **In the Matter of I.W.P., 259 N.C. App. 254, 264 (2018).**

This overarching statutory structure places the burden on the court to develop an individualized disposition in each case, taking the five factors contained in G.S. 7B-2501(c) into consideration. The statute does not provide flexibility for the court to delegate that responsibility to any other party or to the Division of Juvenile Justice (DJJ).

Statutory Mandates Regarding Assessments After Adjudication

The Juvenile Code also requires the court to order assessments under certain circumstances after adjudication and prior to disposition.

- If the juvenile is adjudicated delinquent for committing an offense that involved the possession, use, sale, or delivery of alcohol or a controlled substance, the court must require the juvenile to be tested for the use of controlled substances or alcohol within 30 days of adjudication. **G.S. 7B-2502(a1).**
- The court must order DJJ to make a referral for a comprehensive clinical assessment (CCA) or equivalent mental health assessment after adjudication if the juvenile has been identified as having a suspected mental illness, developmental disability, or intellectual disability and no CCA or equivalent mental health assessment has been conducted within 90 days before the dispositional hearing. **G.S. 7B-2502(a2).**

The court is also required to review any existing CCA or equivalent mental health assessment before ordering disposition in the matter. **G.S. 7B-2502(a3)**. If the court determines that 1) the juvenile has a severe emotional disturbance, a developmental disability, or an intellectual disability, and 2) that condition substantially contributed to the juvenile's delinquent behavior, and 3) the juvenile is eligible for a Juvenile Justice Level 3 disposition and/or is recommended for a Psychiatric Residential Treatment Facility placement, the court must order a care review team to be convened by the DJJ. **G.S. 7B-2502(a3)**.

An additional mandate applies to the court after the convening of a care review team is ordered. The court must review the recommendation plan developed by the care review team when determining disposition according to the factors described above in G.S. 7B-2501(c). **G.S. 7B-2502(a4)**.

Here again, the statute does not offer any ability for the court to delegate these tasks or to circumvent them when the juvenile and the prosecutor agree regarding the appropriate disposition.

Dispositional Limits Based on Disposition Chart

The Juvenile Code also provides a specific structure for determining allowable dispositional alternatives in each case. A disposition chart is included in **G.S. 7B-2508(f)**. It uses offense severity along the left side and delinquency history level across the top to create a matrix that defines which of three potential dispositional Levels can be used in the matter. Both offense severity and the method to be used to calculate delinquency history points are defined by statute. **G.S. 7B-2508(a)**, **G.S. 7B-2507**. In some instances, the chart mandates only one dispositional Level. In other instances, discretion is allowed to choose between two Levels prescribed by the chart. More detailed information on the statutory requirements that govern the determination of the disposition Level can be found in this previous **blog**.

The potential dispositional alternatives available for each Level are limited to the options authorized in **G.S. 7B-2508**. The statutes are clear that it is the court that selects the dispositional alternatives to be used in each case. In describing Level 1 and Level 2 dispositions, the statutes state that the court may provide for evaluation and treatment or any of certain identified dispositional alternatives. The statutes also mandate that the court must "consider the needs of the juvenile as indicated by the risk and needs assessment contained in the predisposition report, the appropriate community resources available to meet those needs, and

the protection of the public” when determining which dispositional alternative is appropriate. **G.S. 7B-2508(c)**, **G.S. 7B-2508(d)**.

When a Level 3 disposition is statutorily required, the court must commit the juvenile to DJJ for placement in a youth development center. **G.S. 7B-2508(e)**. The statute allows the court to impose a Level 2 disposition in a Level 3 case when the court submits written findings on the record that substantiate the juvenile’s extraordinary needs.

Implications for Disposition Negotiations

The statutory structure described above clearly requires the court to consider the factors in G.S. 7B-2501(c) in relation to each juvenile, to order and consider assessments in some cases, and to follow the statutory mandates for identifying and selecting the appropriate dispositional alternative(s). These requirements are all statutory mandates framed as things that the court **shall** do. The appellate courts have been clear that the failure of the court to comply with a statutory mandate is reversible error. *See, e.g., In re J.V.*, 212 N.C.App. 205, 208 (2011) (finding error when the trial court failed to advise the juvenile of their privilege against self-incrimination before testifying) and *In re E.M.*, 263 N.C.App. 476, 478 (2019) (finding error when the trial court failed to refer the juvenile to the area mental health services director as required by the statute at that time). The court therefore cannot order a disposition without engaging in the procedure mandated by statute—even when that disposition is agreed to by the parties.

There may be strategies that parties can employ to work within the statutory mandates and with the court to make an agreed upon disposition more likely to become the court order.

1. Identify the full range of dispositional alternatives.

The statutory structure to determine disposition Level requires that the court identify one adjudicated offense as the basis for the disposition. In most cases, the statutes prescribe the offense for which disposition must be entered. When there is only one adjudicated offense, disposition clearly must be ordered based on that offense. When disposition is being entered for multiple adjudications that occurred during the same session of court, the offenses must be consolidated for

disposition and disposition must be entered based on the most serious offense.

G.S. 7B-2508(h).

There is no statute that prescribes which offense must form the basis of the disposition when a dispositional hearing is addressing multiple adjudications that occurred during different sessions of court. Because delinquency history points are accumulated based on adjudications that occurred before adjudication for the offense that is forming the basis of the disposition (**G.S. 7B-2507(a)**), the number of delinquency history points the juvenile has may vary depending on which offense is used to form the basis of the disposition. Therefore, in cases in which disposition is being entered for adjudications that occurred during different sessions of court, the dispositional Level dictated by the chart should be calculated for each offense that could form the basis of the disposition. This will result in the full spectrum of dispositional alternatives in the matter. An agreed upon disposition may become a clear possibility once the full spectrum of alternatives is identified.

2. For matters in which the chart allows for selection between Levels, identify how the factors in G.S. 7B-2501(c) support the agreed upon Level.

Four of the nine boxes in the disposition chart allow the court to choose between two dispositional Levels. If the case falls into one of those discretionary boxes and the prosecutor and the juvenile agree that one of the allowable Levels is appropriate in the matter, the parties can identify how the factors that the court must consider support that agreement. Sharing that information with the court and offering to draft the dispositional order to include those findings may make the court more comfortable with ordering the agreed upon disposition.

3. For Level 3 dispositions, stipulate to the absence of extraordinary needs that justify a departure to a Level 2 disposition.

Sometimes the parties agree that the case should be resolved through a Level 3 disposition. If the chart dictates that a Level 3 disposition must be ordered in the matter, the parties could agree to stipulate to an absence of extraordinary needs on the part of the juvenile that would justify a departure down to a Level 2 disposition. This kind of stipulation does not necessarily mean that the court could

not make findings of extraordinary needs on its own based on previous evidence in the case. Any such written findings would justify entry of a Level 2 disposition. However, this kind of stipulation may be meaningful to the court in ordering a Level 3 disposition.

There is no strategy that guarantees that the court will order the agreed upon disposition. The law clearly places the burden of selecting an allowable disposition on the court. The statutes that govern what is an allowable disposition and the factors the court must consider when ordering disposition may provide a framework for structuring agreements about disposition in a way that will make those agreements more likely to become the dispositional order of the court. I would love to hear from you if you have additional ideas on this topic. You can always reach me at [**greenes@sog.unc.edu**](mailto:greenes@sog.unc.edu).