

Determining Dispositional Options for Delinquent Juveniles

Statutory Factors for Disposition Decision-Making

As contained in G.S. 7B-2501(c), dispositions must be developed within statutory guidelines (the prescribed Level system), and should be designed to protect the public and to meet the needs and best interests of the juvenile, based on:

- the seriousness of the offense;
- the need to hold the juvenile accountable;
- the importance of protecting the public safety;
- the degree of culpability indicated by the circumstances of the case; and
- the rehabilitative and treatment needs of the juvenile, as indicated by a risk and needs assessment.

The Court of Appeals held in *In the Matter of I.W.P.*, 815 S.E.2d 696 (May 1, 2018) that each of the five factors listed above **MUST** be considered when crafting a disposition.

Dispositions Available in Every Case

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
 - a. more adequate supervision at home,
 - b. placement in a private or specialized school or agency,
 - c. placement with a relative, or
 - d. some other plan that the court approves.

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 may order a parent or the county to pay for it).
3. testing of the juvenile for controlled substances or alcohol (required if adjudication is for an offense that involves possession, use, sale, or delivery of alcohol or a controlled substance).

If there is evidence that the juvenile is mentally ill or developmentally disabled, the court **MUST** refer him/her to the local mental health, developmental disabilities, and substance abuse services director (currently the LME/MCO) for an interdisciplinary evaluation and the mobilization of resources to meet the juvenile's needs. Failure to show that the requirements of this provision were met formed the basis of the decision by the Court of Appeals to vacate and remand an adjudication in *In the Matter of E.M.*, 823 S.E.2d 674 (January 15, 2019).

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 an authorized person or by way of an involuntary commitment proceeding.

Dispositional Alternatives by Level

In addition to the evaluation, treatment, dismissal, and continuance options described above, the Juvenile Code lists twenty-four dispositional alternatives that are divided into three “Levels” —

- Community (Level 1)
- Intermediate (Level 2)
- Commitment (Level 3)

Level 1 Dispositions [G.S. 7B-2506(1) – (13), (16); G.S. 7B-2508(c)]

The court may order any of the following for a Level 1 disposition:

1. order
 - a. supervision of the juvenile in his own home, subject to conditions placed on the juvenile or the parent; or
 - b. placement of the juvenile in the custody of a parent, a relative, DSS, or another suitable person.
*Beginning December 1, 2019, these alternatives can only be ordered for juveniles under the age of 18
2. excuse the juvenile from compulsory school attendance when suitable alternative plans can be arranged.
3. order the juvenile to cooperate, for up to 12 months, with
 - a community-based program,
 - an intensive substance abuse treatment program, or
 - a residential or nonresidential treatment program.
4. order the juvenile to pay restitution of up to \$500.
5. impose a fine (not to exceed maximum fine for an adult for the same offense).
6. order the juvenile to perform up to 100 hours of community service.
7. order the juvenile to participate in a victim-offender reconciliation program.
8. place the juvenile on probation.
9. order that the juvenile not have a driver’s license.
10. impose a curfew.
11. order the juvenile not to associate with particular people or be in specific places.
12. order intermittent detention for up to five 24-hour periods specified by the court.
13. order the juvenile to cooperate with placement in a wilderness program.
14. order the juvenile to cooperate with a supervised day program.

Level 2 Dispositions [G.S. 7B-2506(13) – (23); G.S. 7B-2508(d)]

Level 2 dispositions can include any of the Level 1 dispositional alternatives. If a Level 2 disposition is required, the court is required to order at least one intermediate (Level 2) disposition.

When a Level 2 disposition is required or available, the court may:

1. order the juvenile to cooperate with placement in a wilderness program.
2. order the juvenile to cooperate with a supervised day program.
3. order the juvenile to cooperate with placement in a residential treatment facility, an intensive nonresidential treatment program, an intensive substance abuse program, or a group home other than a state-operated multipurpose group home.
4. place the juvenile on intensive probation.
5. order the juvenile to participate in a regimented training program.
6. order the juvenile to submit to house arrest.
7. suspend a more severe disposition, on the condition that the juvenile meet certain conditions agreed to by the juvenile.
8. order intermittent detention for up to fourteen 24-hour periods specified by the court.
9. place the juvenile in a state-operated residential multipurpose group home.
10. require the juvenile to pay restitution of more than five hundred dollars (\$500.00).
11. order the juvenile to perform up to 200 hours of community service.

Two dispositional options – placement in a wilderness program and participation in a supervised day program – are categorized as both Level 1 and Level 2 dispositions. Thus, either of these may satisfy a requirement that the court order a Level 2 disposition, but they also are available when the court is limited to Level 1 dispositions.

Level 3 Disposition [G.S. 7B-2506(24); G.S. 7B-2508(e); G.S. 7B-2513]

The only Level 3 disposition is commitment of the juvenile to the Division of Adult Correction and Juvenile Justice of the Department of Public Safety, for a period of at least six months, for placement in a youth development center. (While the commitment must last at least six months, after the department’s initial assessment of the juvenile at a youth development center, the court may approve a plan for providing commitment services at a different location.)

NOTE: Most commitments must:

1. be for a minimum of six months;
2. otherwise, be for an *indefinite* period of time;
3. specify an absolute maximum (age 18, 19, or 21); and
4. specify the time before which the juvenile must have notice and an opportunity for a hearing on extension of the commitment beyond either
 - a. the adult maximum or
 - b. the juvenile’s 18th birthday, if extended commitment (to age 19 or 21) is an option in the case.

*Beginning December 1, 2019, juveniles committed to a YDC for an offense committed at age 17 will have an absolute maximum of age 20 for commitment to a YDC and those committed to a YDC for an offense committed at age 16 will have an absolute maximum age of 19 for commitment to a YDC. Notice and opportunity for a hearing will be required at least 30 days in

advance of the juvenile’s 20th (for offenses committed at 17) or 19th (for offenses committed at age 16) birthdays if the juveniles are not going to be released from the YDC prior to those birthdays.

A definite term of commitment between 6 months and two years is allowed if the juvenile:

1. is 14 years of age or older;
2. has been previously adjudicated delinquent for two or more felony offenses; and
3. has been previously committed to a YDC.

Determining Which Dispositions Are Available in a Particular Case

The evaluation, treatment, dismissal, and continuance, dispositions are available in every case. Whether the court either may or must order a community (Level 1), an intermediate (Level 2), or commitment (Level 3) disposition depends primarily on three factors:

1. the severity of the adjudicated offense that is the basis for the disposition;
2. the juvenile’s delinquency history level; and
3. whether the juvenile was on probation at the time of the offense for which a disposition is being ordered.

These factors determine a cell on the “Dispositional Chart” that specifies either a Level or a choice of two Levels from which the court must select a disposition. Factors that come into play to determine whether an exception exists to the Level(s) indicated on the Chart include:

- whether the juvenile previously has been committed to a youth development center or training school
- whether the juvenile has been a “chronic” offender
- whether the juvenile has “extraordinary needs”

*Beginning December 1, 2019, whether the adjudicated offense was committed a part of criminal gang activity, found beyond a reasonable and pursuant to statutory criteria, will be added to these list of exceptions to the Level indicated on the Chart.

1. Offense Classification.

Offenses are classified as:

- violent: Class A through E felonies
- serious: Class F through I felonies and Class A1 misdemeanors
- minor: Class 1, 2, and 3 misdemeanors

A critical first step at every disposition is to determine the one offense that is the basis for the disposition. [It also is critical to distinguish between disposition hearings and hearings on violation of probation or post-release supervision, since very different rules apply in violation hearings.] Multiple adjudications in the same session of court must be consolidated for disposition and be considered on the basis of the most serious offense.

First Determination: The disposition being entered is for a _____ (violent, serious, or minor) offense.

2. **Delinquency History Level.**

The delinquency history level is based upon the juvenile’s prior delinquency adjudications and the juvenile’s probation status when the current offense was committed. (A “prior adjudication” is an adjudication of an offense that occurred before the adjudication of the offense for which a disposition is being ordered.) Points are assigned as follows:

Each prior adjudication of a violent offense (Class A - E felony)	4 points
Each prior adjudication of a serious offense (Class F -I felony, Class A1 misdemeanor)	2 points
Each prior adjudication of a minor offense (Class 1, 2, or 3 misdemeanor)	1 point
On probation at time of offense for which disposition is being entered	2 points

If the juvenile was adjudicated delinquent for more than one offense in a single session of court, only the adjudication for the offense with the highest point total is used. This rule applies even if the adjudications are for unrelated offenses that occurred on different dates. The key is whether they were adjudicated on the same date.

Points are not assigned for the offense for which a disposition is being ordered.

Probation Status. Two points are added if the offense for which disposition is being ordered was committed while the juvenile was on probation. (The juvenile’s probation status when s/he committed any prior offenses is not relevant and does not result in the assignment of additional points.)

The juvenile’s delinquency history level is classified as follows:

- low: 0 – 1 point
- medium: 2 – 3 points
- high: 4 or more points

Second Determination: The juvenile has _____ points and therefore has a _____ (low, medium, or high) delinquency history level.

3. Dispositional Chart for Delinquency Cases

Offense	Delinquency History Level		
	Low (0-1 point)	Medium (2-3 points)	High (4 or more points)
Violent	Level 2 or 3	Level 3 ¹	Level 3 ¹
Serious	Level 1 or 2 ²	Level 2 ²	Level 2 or 3
Minor	Level 1	Level 1 or 2 ²	Level 2 ^{2,3}

Third Determination: According to the Chart, the court must order a disposition from _____

- _____ Level 1
- _____ Level 1 or 2
- _____ Level 2
- _____ Level 2 or 3
- _____ Level 3

¹ The court may order a Level 2 disposition if the court finds that the juvenile has extraordinary needs.

² The court may order a Level 3 disposition if the juvenile has been committed previously to a youth development center (or training school).

³ The court may order a Level 3 disposition if the juvenile has 4 “prior adjudications.” Each of the four or more successive offenses must be one that was committed after adjudication of the preceding offense.

4. Exceptions to the Chart

A. **Previous commitment.** [G.S. 7B-2508(d)]

When the Chart authorizes or requires a Level 2 disposition but not a Level 3 disposition, the court nevertheless *may* order a Level 3 disposition, *i.e.*, commitment, if the juvenile has been committed before.

B. **History of chronic offending.** [G.S. 7B-2508(g)]

The Chart suggests that a Level 3 disposition is never an option when the court is ordering disposition for a minor offense, and that is almost always the case. The court *may* order a Level 3 disposition for a minor offense, however, if the juvenile has been adjudicated delinquent for four or more prior offenses. “Prior,” in this context, has a different meaning from the one used to determine a juvenile’s delinquency history level. Here, a prior offense is one that was committed and adjudicated before commission of the next offense.

C. **Extraordinary needs.** [G.S. 7B-2508(e)]

When the Chart indicates that only a Level 3 disposition may be ordered, the court nevertheless *may* order a Level 2 disposition instead, if the court makes written findings substantiating that the juvenile has extraordinary needs. The appellate courts have not had occasion to interpret “extraordinary needs.”

D. **Criminal Gang Activity.** [G.S. 7B-2508(g1) effective 12/1/2019]

If the court finds, beyond a reasonable doubt, that the offense for which the juvenile was adjudicated was part of criminal gang activity, the juvenile *must* receive a disposition that is one Level higher than the chart dictates. Criminal gang activity is specifically defined in G.S. 7B-2508.1. There is no capacity to raise the disposition level higher than Level 3.

Fourth Determination: Despite level(s) indicated on the Chart, an exception authorizes or requires the court to enter a disposition from_(Level 2; Level 3; not applicable).

The court of appeals has expressed broad deference to trial courts’ discretion in ordering dispositions in delinquency cases. Affirming a trial court’s order committing a juvenile to the Division of Adult Correction and Juvenile Justice, the court of appeals said:

Once a juvenile is placed in a dispositional level, the statutes provide dispositional alternatives which may be utilized by the trial court. However, in those instances where there is a choice of level, there are no specific guidelines solely directed at resolving that issue. Accordingly, choosing between two appropriate dispositional levels is within the trial court’s discretion. Absent an abuse of discretion, we will not disturb the trial court’s choice. ‘An abuse of discretion occurs when the trial court’s ruling “is so arbitrary that it could not have been the result of a reasoned decision.”’ (citations omitted)

There are overall guidelines for the trial court within the Juvenile Code, however, including . . . section 7B-2500, titled ‘Purpose,’ which provides in part: The court should develop a disposition in each case that:

- (1) Promotes public safety;
- (2) Emphasizes accountability and responsibility of both the parent,

guardian, or custodian and the juvenile for the juvenile's conduct; and
(3) Provides the appropriate consequences, treatment, training, and rehabilitation to assist the juvenile toward becoming a nonoffending, responsible, and productive member of the community.

In re Robinson 151 N.C. App. 733 737-738, 567 S.E.2d 227, 229-230 (2002).