

ORDERING MENTAL HEALTH EVALUATIONS AND TREATMENT IN JUVENILE DELINQUENCY COURT

I. Evaluation and Treatment of Juveniles - G.S. 7B-2502(a)-(b)

a. Authority.

- i. 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*).

b. Arrangement of Evaluation and Treatment.

- i. The court must 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.
- ii. If the parent refuses or is unable to make the arrangements, the court may then order the needed evaluation or treatment.

c. Cost of Evaluation and Treatment.

- i. *Parents* – The court may order the juvenile's parent to pay for the cost of evaluation or treatment. G.S. 7B-2702(a).
- ii. *County* – 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. Notice and an opportunity to be heard must be provided to the county manager or other designated county official. The county department of social services must recommend the facility that will provide the evaluation or treatment.

1. *Right to Appeal* – The county has a statutory right to appeal an order requiring the county to pay for a juvenile's evaluation or treatment. G.S. 7B-2604(c).

iii. The court can order a county to pay for *existing* treatment and services.

1. *In re D.R.D.*, 127 N.C. App. 296 (1997) (affirming a court order directing Stokes County to pay \$340 per day, or more than \$124,000 for the estimated one year treatment period, for a 12-year-old's inpatient sex offender treatment program at a Winston-Salem hospital where the court had considered all alternative programs and their relative costs and the inability of the juvenile's parent to pay). *The trial court's complete findings and conclusions are set forth in the Court of Appeals' opinion.*

iv. The court cannot order a county to create treatment programs.

1. *Matter of Wharton*, 305 N.C. 565 (1982) (reversing a court order directing Guilford County DSS, in conjunction with the area mental health authority, to "implement the creation of a foster home" and provide for its maintenance in order to meet the needs of the juvenile and others like him).

- v. The court cannot order a county to pay for treatment in an out-of-state facility.
 - 1. *In re Brownlee*, 301 N.C. 532 (1981) (the trial court did not have authority to order the county to pay for the juvenile's treatment in an out-of-state facility).

II. Treatment of Mental Illness or Developmental Disability – G.S. 7B-2502(c)

- a. Referral to LME.
 - i. 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.
- b. Inpatient Treatment.
 - i. The court may never commit the juvenile directly to a state hospital or mental retardation center.
 - ii. Except for purposes of an evaluation of the juvenile's competence to proceed, a juvenile's admission to a state hospital must be pursuant to:
 - 1. A parent or guardian's voluntary consent;
 - 2. An involuntary commitment proceeding; or
 - 3. The court's consent, if the LME director recommends inpatient admission and the parent refuses to consent.
 - iii. When a state hospital either refuses a juvenile's admission or discharges the juvenile prior to completion of the juvenile's treatment, it must submit a written report to the referring court setting forth:
 - 1. The reasons for denial of admission or early discharge;
 - 2. The juvenile's diagnosis, indications of mental illness, and indications of need for treatment; and
 - 3. A statement as to the location of any facility with an appropriate treatment program for the juvenile.

III. Evaluation and Treatment of Parents – G.S. 7B-2702

- a. Authority.
 - i. The court may order a parent to cooperate with the juvenile's evaluation and treatment.
 - ii. If the court finds it to be in the juvenile's best interests, the court also may order a parent to undergo evaluation and treatment, or condition legal custody or physical placement of the juvenile with the parent upon the parent's compliance with treatment.
- b. Cost of Evaluation and Treatment.
 - i. *Parents* – The court may order a parent to pay for the cost of evaluation or treatment. G.S. 7B-2702(d).
 - ii. *County* – If the court has conditioned legal custody or physical placement of the juvenile with the parent upon the parent's compliance with treatment and the court finds the parent is unable to pay, the court may order the county to pay for the cost of the parent's evaluation or treatment. Notice and an opportunity to be heard must be provided to the county manager or other designated county official.

1. The court may also order a parent to receive evaluation or treatment currently available from the area mental health program that serves the parent's catchment area.
2. *Right to Appeal* – The county has a statutory right to appeal an order requiring the county to pay for a juvenile's evaluation or treatment. G.S. 7B-2604(c).

IV. Drafting Good Court Orders for Evaluation and Treatment

- a. Order a "Comprehensive Clinical Assessment."
 - i. A CCA 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 CCA 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.
 - b. Avoid language that delegates the court's authority to order treatment.
 - i. Only the court may determine whether a juvenile will undergo evaluation or treatment. However, the court can give others discretion to determine the details of the treatment ordered, such as selecting the treatment provider, facility, or plan of care.
- ii. Sample Invalid Orders:
1. "The court directs said juvenile be placed at the multipurpose group home in Winton, NC for a period not to exceed 240 days *if recommended by the court counselor.*" *In re J.L.H.*, __ N.C. App. __ (March 1, 2016) (unpublished).
 2. "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).
 3. "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).
- iii. Sample Valid Orders:
1. The juvenile shall cooperate with an out of home placement "as directed by New River Behavior Health Care." *In re V.A.L.*, 187 N.C. App. 302 (2007).
 2. The juvenile shall "cooperate and participate in a residential treatment program as directed by a court counselor or mental health agency." *In re M.A.B.*, 170 N.C. App. 192 (2005).

- c. Allow the juvenile's parent or guardian to arrange for treatment.
 - i. 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. Because juveniles with behavioral health needs are frequently involved with multiple agencies, the family may be already working with a provider 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.
 - ii. 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.
- d. Order the disclosure of mental health and substance abuse records.
 - i. 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.