

13.11 Modification of Dispositional Order

- A. Jurisdiction
 - B. Procedures for Modifying a Dispositional Order
 - C. Appeal of Denial of Motion to Modify Disposition
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13.11 Modification of Dispositional Order

A. Jurisdiction

The court has jurisdiction pursuant to G.S. 7B-2600(c) to modify a dispositional order during the following periods:

- during the minority of the juvenile;
- until the juvenile reaches the age of 19 years if the juvenile has been committed to the Division for the offenses specified;
- until the juvenile reaches the age of 21 years if the juvenile has been committed to the Division for first-degree murder, first-degree forcible rape, or first-degree forcible sexual offense; or
- until terminated by order of the court (but not later than the above time periods).

B. Procedures for Modifying a Dispositional Order

After the court orders a disposition, it can enter an order modifying the disposition on motion of the juvenile or the State. A sample motion to modify a dispositional order is available on the [Juvenile Defender website](#).

There are three circumstances in which the court can modify the disposition. First, the court may hold a hearing on the modification of a dispositional order on the filing of a motion or petition under G.S. 7B-2600(a). Since the statute does not specify that the motion or petition must be filed by the juvenile, the State may also file a motion or petition. At the hearing on the dispositional order, the court must determine whether the dispositional order is in the best interests of the juvenile and may modify or vacate the order based on “changes in circumstances” or the “needs of the juvenile.” G.S. 7B-2600(a). In *In re D.G.*, 191 N.C. App. 752, 756 (2008), the Court of Appeals upheld an order striking residential sex offender treatment from a dispositional order because the court counselor determined that the juvenile was not eligible for the treatment. The Court held that the modification was proper under G.S. 7B-2600(a) because the court counselor’s determination the juvenile was not eligible for the treatment program qualified as a change in circumstances under G.S. 7B-2600(a).

Second, the court may reduce the nature or duration of the disposition under G.S. 7B-2600(b) if the dispositional order was imposed in an illegal manner or is unduly severe with respect to the seriousness of the offense, the culpability of the juvenile, or the dispositions given to juveniles adjudicated delinquent for similar offenses. In *In re A.F.*, 231 N.C. App. 348 (2013), the Court of Appeals reversed the denial of a motion to

modify filed under G.S. 7B-2600(b). According to the Court of Appeals, the trial court improperly assessed two delinquency history points under G.S. 7B-2507 for committing the offense while on probation because the juvenile was not on probation on the offense date for the case. Based on the improper assessment of the two points, the Court of Appeals concluded that the trial court did not have the authority to impose a Level 3 disposition in its original dispositional order and that the trial court erred by denying the motion to modify the order.

Third, the court may order an alternative disposition under G.S. 7B-2601 if the Division of Juvenile Justice determines that the juvenile is not suitable for its program. If the court orders an alternative disposition under G.S. 7B-2601, the alternative disposition must be consistent with G.S. 7B-2508.

C. Appeal of Denial of Motion to Modify Disposition

Although the Court of Appeals discussed motions filed under G.S. 7B-2600 in *In re D.G.*, 191 N.C. App. 752, 756 (2008), and *In re A.F.*, 231 N.C. App. 348 (2013), it did not discuss whether a juvenile has the right to appeal the denial of a motion to modify a dispositional order. In both cases, the right to appeal was not in dispute because the juveniles appealed both the dispositional orders and the orders denying their motions to modify disposition. There are no other cases that discuss the right to appeal the denial of a motion to modify a dispositional order. The juvenile may have the right to appeal such an order under G.S. 7B-2602. According to subsection (3) of the statute, a juvenile may appeal from “[a]ny order of disposition” An order denying a motion to modify disposition arguably falls under subsection (3). For a further discussion of the juvenile’s right to appeal, see *infra* Chapter 16, Appeals.