
13.5 Dispositional Hearing

A. Conduct of the Hearing

Hearing may be informal. The dispositional hearing may be informal, with the rules of evidence relaxed. G.S. 7B-2501(a). Counsel still must be vigilant in taking necessary steps to protect the juvenile's interests. An objection should be made to any parts of the predisposition report that are not admissible under the hearsay rules discussed below. The juvenile court counselor can be cross-examined as to the sources of information. If necessary, counsel should subpoena and cross-examine the people who are the sources of information in the report.

There is no statutory prohibition on the presentation of evidence by the juvenile. Counsel should call witnesses if testimony would be more effective than a report. Reports that are helpful to the juvenile should be offered into evidence, however, to counter negative information contained in the dispositional report.

Dispositional guidelines. G.S. 7B-2501(c) mandates that the court consider both the protection of the public and the needs and best interests of the juvenile in developing a dispositional order. Counsel should argue that the court should tailor the dispositional order to meet the juvenile's needs in advocating for the disposition sought by the juvenile.

Pursuant to G.S. 7B-2501(c)(1)–(5), the following factors are to be considered by the court:

- 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 particular case, and
- the rehabilitative and treatment needs of the juvenile indicated by a risk and needs assessment.

Evidence. "Any evidence" is admissible, including hearsay, that the court finds to be "relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition." G.S. 7B-2501(a). Written reports concerning the needs of the juvenile are admissible. *Id.*

Counsel should continue to object to evidence that does not meet the statutory standard of relevance, reliability, and necessity. For example, statements based on double hearsay ("The mother/neighbor/co-respondent stated that the teacher/doctor/counselor said . . .") or evaluations that are no longer current may be objectionable. Inappropriate recommendations of the court counselor, such as for substance abuse treatment when there is no evidence of substance abuse, should be objected to and argued against. A motion for a continuance to subpoena a witness for cross-examination may be made if unreliable hearsay information is admitted over counsel's objection.

Right of juvenile and parent to present evidence. The juvenile and the juvenile's parent, guardian, or custodian have the right to present evidence and make argument to the court concerning the appropriate disposition. G.S. 7B-2501(b). Counsel should talk with the parent concerning the parent's position on disposition and explain the possible consequences of the parent making negative statements regarding the juvenile at disposition. *See supra* "Disposition" in § 3.5E, Parent, Guardian, or Custodian.

Defense dispositional plan. Counsel should prepare a dispositional plan and, where appropriate, a dispositional memorandum. Topics that may be included are:

- favorable information, including mitigating factors and relative culpability concerning the offense, and information regarding the juvenile's personal background, educational history, employment record and opportunities, and financial status;
- factors supporting a disposition other than confinement, such as the potential for rehabilitation or the nonviolent nature of the crime;
- the availability of treatment programs, treatment facilities, and community service work opportunities;
- challenges to incorrect or incomplete information or inappropriate references and characterizations in the State's evidence; and
- if appropriate, a counterproposal to confinement.

See N.C. Commission on Indigent Defense Services, Performance Guidelines for Appointed Counsel in Juvenile Delinquency Proceedings at the Trial Level § 10.5 (2007) reprinted *infra* in Chapter 18 of this manual.

Dismissal. The court may dismiss the case after an adjudication of delinquency, although the statute provides no guidelines for doing so. G.S. 7B-2501(d). Dismissal of the case might be appropriate, for example, for a first offense that is relatively minor, when the juvenile's parents have taken adequate steps to address underlying problems, or when the experience of being in juvenile court has had a positive effect on the juvenile's behavior.

Continuance of disposition. A continuance of up to six months may be ordered specifically to allow the juvenile's family to address the juvenile's needs. G.S. 7B-2501(d). The needs of the juvenile may be met by providing more adequate home supervision, through placement in a private or specialized school or agency, or through some other plan approved by the court. G.S. 7B-2501(d). Even if the case involves a

serious offense, the court might grant a continuance of disposition under this statute if counsel presents a comprehensive plan. If the plan has been successful when the case is rescheduled, the court may dismiss the case or impose a more lenient disposition than it might have originally entered.

Counsel should move for a continuance of disposition when appropriate and consider filing a written motion and supporting memorandum of law. Documentation outlining the family's efforts to explore community resources and the resulting proposed dispositional plan may persuade the court to continue the dispositional hearing.

B. Court-Ordered Evaluation and Treatment

Evaluation. To assist in developing an appropriate disposition, the court may order that the juvenile be examined by a physician, psychiatrist, psychologist, or other qualified expert. G.S. 7B-2502(a).

The court must allow the parent to arrange for the ordered evaluation as the first option. G.S. 7B-2502(b). If the parent accepts this responsibility, counsel should seek to work with the parent in selecting the most appropriate expert to perform the evaluation. Counsel may suggest someone who has worked with juveniles and who has performed thorough and effective juvenile court evaluations in other cases.

If the parent refuses or is unable to make the arrangements, the court may enter an order specifying who will perform the evaluation. G.S. 7B-2502(b). Counsel might suggest that the court appoint an expert with whom the juvenile has an existing relationship or an expert who has worked with juveniles and has done other juvenile court evaluations. After the court has ordered a particular expert to perform an evaluation, counsel should contact the expert to provide background material or other information that might be helpful to the juvenile's position.

The Juvenile Code suggests that the evaluation might be done on an inpatient basis, as it directs the court to consider whether it is in the juvenile's interest to remain in the county of residence "[i]n placing a juvenile in out-of-home care under this section." G.S. 7B-2502(a). Typically, the juvenile will prefer to be evaluated on an outpatient basis.

Counsel should obtain a copy of any report resulting from the examination before further proceedings occur. The expert may be contacted to provide clarifying information to supplement the report. If necessary, counsel should subpoena the expert for cross-examination about the evaluation.

Hearing. A hearing must be held after completion of the examination to determine whether the juvenile is in need of medical, surgical, psychiatric, psychological, or other evaluation or treatment. G.S. 7B-2502(b). Generally, the court will review any written report regarding the evaluation or receive testimony from the evaluator regarding the report and recommendations. Counsel should cross-examine any witnesses and present evidence favorable to the juvenile's position. The juvenile might have an ongoing

relationship with a counselor, therapist, teacher, or other person who could present testimony helpful to the court and to the juvenile's position. In some cases, the juvenile's parent might be called on the juvenile's behalf. There is a danger, however, in presenting testimony from a parent who downplays the juvenile's problems and does not understand the need for or intend to pursue an appropriate plan.

The county manager of the county of the juvenile's residence, or other designated person, must be given notice of the hearing and be allowed to be heard. This is required because the county may be required to pay for the cost of the juvenile's evaluation and treatment, discussed next. G.S. 7B-2502(b).

Cost of treatment. If the court decides to order treatment, it must also determine who will be responsible for the cost. The statute presumes that the parent who arranges for evaluation and treatment will pay for the cost. If the court determines that the parent is unable to pay, however, the court must order the county of the juvenile's residence to pay for evaluation and treatment. In that case, the county department of social services is required to recommend the facility that will evaluate and treat the juvenile. G.S. 7B-2502(b).

C. Court-Ordered Drug Testing

If a juvenile is adjudicated delinquent for an offense that involves the possession, use, sale, or delivery of alcohol or a controlled substance, the court *must* order that the juvenile be tested for use of a controlled substance or alcohol within 30 days of the adjudication. In other cases, the court *may* order that the juvenile be tested for use of a controlled substance or alcohol. Counsel should object if no evidence of drug use has been presented. If ordered, the results of these initial tests, as opposed to regular testing ordered as part of disposition, may be used for evaluation and treatment purposes only. G.S. 7B-2502(a).

A juvenile court counselor may require the juvenile to submit to drug testing if the court makes this a condition of probation. G.S. 7B-2510(a)(7)c., 7B-2510(b)(2); *see In re Schrimpsher*, 143 N.C. App. 461, 466–67 (2001) (court did not have authority to order as a condition of probation that the juvenile submit to urinalysis, blood, or breathalyzer testing on request of any law enforcement officer; juvenile conceded that court had authority to order juvenile to submit to testing on request of court counselor).

D. Evaluation and Treatment of Mentally Ill or Developmentally Disabled Juvenile

Referral to area program. The court must refer a juvenile to the area mental health, developmental disabilities, and substance abuse services director (hereinafter the director) for "appropriate action" if it believes or if there is evidence presented that the juvenile is mentally ill or developmentally disabled. G.S. 7B-2502(c). The director must obtain an interdisciplinary evaluation and arrange for services to meet the juvenile's needs. *Id*. These services could include a specialized school, therapy, counseling, a personal aide, or residential treatment.

Inpatient treatment. A juvenile may be admitted to a mental health facility or mental retardation center with the consent of the parent, guardian, or custodian (hereinafter the parent) if the area program evaluation determines that this is the best service for the juvenile. G.S. 7B-2502(c). If the parent refuses to consent after admission is recommended by the director, the court may provide the consent and signature required for admission. *Id*. This commitment is called a voluntary admission although from the juvenile's standpoint it is involuntary.

If the juvenile is refused admission by a regional mental hospital or is discharged before treatment is complete, the hospital must report this to the court. G.S. 7B-2502(c). There must be a written report outlining the reasons for denial of admission or discharge and the juvenile's diagnosis, symptoms of mental illness, indications of need for treatment, and a referral to another facility that could provide appropriate treatment for the juvenile. *Id*.

Voluntary admission of a juvenile to an inpatient facility must conform to the procedures in G.S. Chapter 122C. *See* NORTH CAROLINA CIVIL COMMITMENT MANUAL Ch. 6, Voluntary Admission of Minors (2d ed. 2011). A district court judge must review the voluntary admission in a separate proceeding in which the juvenile is represented by counsel. *See* G.S. 122C-221 through 122C-224.7. Special counsel generally represents juveniles at State hospitals, and counsel is usually appointed for juveniles at other facilities. A juvenile *must* be discharged by the "responsible professional" at any time it is determined that the juvenile is no longer mentally ill or is no longer in need of treatment at the facility. The juvenile must meet *and* continue to meet the criteria for voluntary admission for inpatient treatment—that is, being mentally ill or a substance abuser and in need of treatment at the facility. G.S. 122C-224.7.

At the hearing to review the voluntary admission, the court may concur with the admission and authorize continued treatment for up to 90 days at the initial hearing, continue the admission for an additional 15 days for additional diagnosis and evaluation, or discharge the juvenile. G.S. 122C-224.3(g).