

### 13.7 Delinquency History Levels and Offense Classification

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## 13.7 Delinquency History Levels and Offense Classification

### A. Statutory Classifications

The classification structure for juvenile offenses and delinquency history levels requires that the court impose a dispositional alternative within one of three levels determined by the statutory classification of the offense (violent, serious, or minor) and the juvenile's delinquency history level, determined by points assigned for each adjudicated offense. G.S. 7B-2506 through 7B-2508. Counsel must be familiar with the statutory scheme to be prepared to argue for the least restrictive disposition within the juvenile's delinquency level and to advise the court if an impermissible disposition is considered.

The Administrative Office of the Courts has created a delinquency history worksheet, which includes a section for prior adjudications and a table to calculate the number of delinquency history points. See [AOC-J-469](#) (Delinquency History Level Worksheet) (Oct. 2016). The Office of the Juvenile Defender has also created a quick reference guide that summarizes many of the statutes that govern the process for determining the dispositional level and a chart describing dispositional alternatives available for each dispositional level. See *infra* Appendix 13-2: Quick Reference Guide for Dispositional Hearings, and Appendix 13-3: Juvenile Disposition Options.

### B. Determining the Classification of the Offense

The dispositional alternatives that the trial court may impose are determined in part by the classification of the offense for which the juvenile is adjudicated delinquent. Offenses are divided into the following three categories under G.S. 7B-2508(a):

Offense Category	Offense Class
Violent	Class A through E felony
Serious	Class F through I felony or Class A1 misdemeanor
Minor	Class 1, 2, or 3 misdemeanor

### C. Determining Delinquency History Levels

**Generally.** The dispositional alternatives available to the trial court are also determined by the total points assigned to the juvenile's prior adjudications and the juvenile's probation status, if any. G.S. 7B-2507(a). Counsel should review the court file and use the delinquency history worksheet to determine the juvenile's delinquency history level prior to the dispositional hearing. See [AOC-J-469](#) (Delinquency History Level

Worksheet) (Oct. 2016). The delinquency history provided to the court by the prosecutor or court counselor may be inaccurate and could result in an improper disposition if counsel does not object. The provisions for assigning points and determining the delinquency history level based on those points are set forth in G.S. 7B-2507(b) and (c), respectively.

**Points.** Points are assigned for each prior adjudication as follows:

Offense Class	Points
Class A through E felony	4 points
Class F through I felony or Class A1 misdemeanor	2 points
Class 1, 2, or 3 misdemeanor	1 point
On probation at time of offense	2 points

**Delinquency history levels by points.** Delinquency history levels as determined by points are as follows:

Delinquency History Level	Points
Low	No more than 1 point
Medium	2 or 3 points
High	4 or more points

**Reviewing the juvenile’s history of prior adjudications.** Counsel should carefully review the juvenile’s prior adjudications before the dispositional hearing. A juvenile who is adjudicated delinquent for more than one offense in a single session of court is assigned points based only on the offense having the highest points. G.S. 7B-2507(d). Based on this provision, it is generally advantageous for a juvenile to have multiple petitions that are filed within a short period of time adjudicated in the same session of court. If the petitions are adjudicated in separate court sessions, the juvenile may receive a higher point total at a later dispositional hearing on a new petition.

Although the court may assign points for adjudications that arose in different sessions of court, there is one limitation on the court’s authority to assign points in those circumstances. As part of the 2015 Juvenile Code reform bill, the General Assembly defined a prior adjudication as “an adjudication of an offense that occurs before the adjudication of the offense before the court.” G.S. 7B-2507(a); 2015 N.C. Sess. Laws Ch. 58 (H879). The legislation reversed the holding of *In re P.Q.M.*, 232 N.C. App. 419, 434 (2014), which held that it was proper for the trial court to assess delinquency history level points for an adjudication that arose after the adjudication that was the subject of the dispositional order.

Additionally, the juvenile’s delinquency history level is determined by the classification of the prior offense at the time the current offense was committed. G.S. 7B-2507(c). In other words, the court must classify the prior adjudication based on the classification of the crime on the offense date for the current offense. Counsel should ensure that the court

assigns the proper classification for any prior adjudications for crimes that have been assigned a lower classification since the juvenile was adjudicated.

**Proof of prior adjudications.** The State bears the burden of proof by the preponderance of the evidence to show that the prior adjudication exists and that the juvenile is the person who committed the offense. Prior adjudications must be proved by stipulation of the parties, an original or copy of the court record of the prior adjudication, a copy of the record maintained by the Division of Criminal Information or by the Division of Juvenile Justice, or by any other method found by the court to be reliable. G.S. 7B-2507(f).

The prosecutor must make “all feasible efforts” to obtain and present to the court the full record of the juvenile. It must be provided to the juvenile on request. G.S. 7B-2507(f). Counsel should submit a request for the Division of Juvenile Justice record directly to the chief court counselor as well as make a timely request to the prosecutor for the record that will be submitted in court. A sample form for requesting the release of the Division’s files for the juvenile is available on the [Office of the Juvenile Defender website](#).

The delinquency history worksheet contains a section in which counsel can affirmatively stipulate in writing to prior adjudications. See [AOC-J-469](#) (Delinquency History Level Worksheet) (Oct. 2016). However, counsel can also stipulate orally at the dispositional hearing or by failing to object to reports that describe prior adjudications. See *In re D.R.H.*, 194 N.C. App. 166, 172 (2008) (juvenile’s attorney stipulated to prior adjudications by failing to contest or inquire into prior adjudications that were listed in a report prepared by the court counselor for the juvenile’s disposition hearing).

Even if counsel stipulates to prior adjudications, the stipulation is not binding if the court miscalculates the juvenile’s delinquency history level. See *State v. Fraley*, 182 N.C. App. 683, 691 (2007) (remanding for resentencing despite the defendant’s stipulation to prior convictions because the convictions did not support the prior record level chosen by the trial court).

**Classification of prior adjudications from other jurisdictions.** An adjudication of a felony in a jurisdiction outside of North Carolina is generally classified as a Class I felony. An adjudication of a misdemeanor is generally classified as a Class 3 misdemeanor. G.S. 7B-2507(e).

The juvenile may have a felony from another jurisdiction treated as a misdemeanor on proof by a preponderance of the evidence that the offense in the other jurisdiction is “substantially similar” to a misdemeanor offense in North Carolina. G.S. 7B-2507(e).

If the State proves by a preponderance of the evidence that an offense classified as a misdemeanor in another jurisdiction is “substantially similar” to an offense that is classified as a Class I felony or higher in North Carolina, the offense is treated as that specific class of felony for the purpose of assigning points. For example, if the State establishes that the offense from another jurisdiction is substantially similar to a common law robbery in North Carolina, the offense would be treated as a Class G felony. If the

State proves by a preponderance of the evidence that an offense classified in another jurisdiction as a misdemeanor is “substantially similar” to an offense classified as a Class A1 misdemeanor in North Carolina, the offense is treated as a Class A1 misdemeanor for the purpose of assigning points.

**Assessing points for committing the offense while on probation.** The trial court may assess two delinquency history points under G.S. 7B-2507(b)(4) if the juvenile committed the offense while on probation. Counsel should therefore review the juvenile’s probationary status before the dispositional hearing.

In *In re A.F.*, 231 N.C. App. 348 (2013), the juvenile’s attorney stipulated that the juvenile was on probation on the offense date for the case. The trial court originally placed the juvenile on probation during an earlier dispositional hearing. However, the court never extended the probationary period, which expired before the offense date for the adjudication that was the subject of the appeal. As a result, both the stipulation and the court’s assessment of two points under G.S. 7B-2507(b)(4) were improper. *Id.* at 356.