

13.8 Dispositional Limits for Each Class of Offense and History Level

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G.S. 7B-2508 outlines three dispositional levels for delinquency cases. The following chart from G.S. 7B-2508(f) prescribes the dispositional levels that are available to the trial court based on the offense classification and delinquency history level.

DISPOSITION CHART			
OFFENSE	DELINQUENCY HISTORY		
	Low	Medium	High
Violent	Level 2 or 3	Level 3	Level 3
Serious	Level 1 or 2	Level 2	Level 2 or 3
Minor	Level 1	Level 1 or 2	Level 2

The chart is also available in section I of the delinquency history worksheet. See [AOC-J-469](#) (Delinquency History Level Worksheet) (Oct. 2016).

The three dispositional levels described in G.S. 7B-2508, as well as the dispositional alternatives available for each level, are described below.

Level 1 (Community Disposition)

- Dispositional alternatives (1)–(13) and (16) under G.S. 7B-2506 are available to the court. G.S. 7B-2508(c).
- In choosing among the alternatives, the court must consider the juvenile’s needs as outlined in the risk and needs assessment section of the predisposition report, the appropriate community resources available to meet those needs, and the protection of the public. G.S. 7B-2508(c).

Level 2 (Intermediate Disposition)

- Dispositional alternatives (1)–(23) under G.S. 7B-2506 are available to the court with the proviso that at least one disposition listed in (13)–(23) must be ordered. The court may order a Level 3 disposition if the juvenile has received a Level 3 disposition in a prior proceeding. G.S. 7B-2508(d).

- The standard for determination of the appropriate disposition is the same as for a Level 1 disposition. G.S. 7B-2508(d).
- The court may impose a Level 2 disposition even if the juvenile is subject to a Level 3 disposition if the court makes written findings that substantiate extraordinary needs of the juvenile. G.S. 7B-2508(e).

Level 3 (Commitment)

- Only alternative (24), commitment to the Division of Juvenile Justice of the Department of Public Safety, is allowed as a disposition under Level 3. G.S. 7B-2508(e); *see also infra* Chapter 15, Commitment to the Division of Adult Correction and Juvenile Justice.
- The court may order a Level 3 disposition if the juvenile has four or more separate adjudications of delinquency. G.S. 7B-2508(g). The prior adjudications must be non-overlapping, that is, the juvenile must have committed each successive offense after being adjudicated of the preceding offense. *Id.*
- If the juvenile is subject to a Level 2 disposition based on the offense classification and the delinquency history level, the court may order a Level 3 disposition if the juvenile has previously received a Level 3 disposition in a prior juvenile case. G.S. 7B-2508(d).
- If the juvenile is subject to a Level 2 disposition based on the offense classification and the delinquency history level, the court may order a Level 3 disposition if the court, after notice and a hearing, finds by the greater weight of the evidence that the juvenile has violated the conditions of probation. G.S. 7B-2510(e).

See supra § 13.6B, Statutory Categories; *see also* Janet Mason, [Determining Dispositional Options for Delinquent Juveniles](#), 2007 New Juvenile Defender Program (UNC School of Government).

Consolidation of offenses. If a juvenile is adjudicated delinquent for more than one offense during a single session of court, the court must consolidate the offenses for disposition and impose a single disposition for the consolidated offenses based on the class of offense and delinquency history level for the most serious offense. G.S. 7B-2508(h).

The term “session” is not defined in the Juvenile Code. The Court of Appeals has indicated that “session” refers to a week-long period in juvenile court. *In re D.R.H.*, 194 N.C. App. 166, 169 (2008). If the juvenile is adjudicated for multiple offenses during separate sessions of court but a single disposition hearing is held for all of the offenses, the court may still consolidate the offenses for disposition.

The statute does not address the situation in which the juvenile is adjudicated delinquent while subject to the terms of a prior dispositional order. In *In re Thompson*, 74 N.C. App. 329, 330 (1985), the Court of Appeals held that a trial court could set a dispositional order to run consecutive to an existing dispositional order. Although *Thompson* has not been overruled, its precedential value is limited under the current version of the Juvenile Code. Under G.S. 7B-2513, most Level 3 commitments involve an indefinite maximum term. Further, the decision to extend the juvenile's commitment is determined by the Division. G.S. 7B-2515. Consequently, if a trial judge wanted to impose a consecutive Level 3 dispositional order, there would likely be no fixed date by which the judge could set the new disposition to begin. Additionally, while there is no specific procedure in the Juvenile Code that addresses this situation, counsel should argue that the trial court should consolidate the new Level 3 disposition into the prior disposition and permit the Division to determine when the juvenile should be released.

If the juvenile is adjudicated for an offense while serving an existing term of probation, counsel should argue against the imposition of an additional term of probation for the new adjudication. Counsel should assert that subjecting the juvenile to two concurrent periods of probation would be confusing, especially if the orders contain different conditions. Counsel should therefore advocate for modification of the existing period of probation based on the new adjudication.

Court's discretion. The court has wide discretion in ordering a disposition within this statutory scheme. For example, it can order dismissal or a continuance of disposition in any case. G.S. 7B-2501(d); *see supra* "Dismissal" and "Continuance of disposition" in § 13.5A, Conduct of the Hearing. Level 1 dispositional alternatives may be ordered in every case. Level 2 dispositional alternatives are permissible for Level 3 cases on the court's finding of extraordinary needs of the juvenile. G.S. 7B-2508(e). For Level 2 cases, the court must order at least one intermediate dispositional alternative in G.S. 7B-2506(13)–(23). G.S. 7B-2508(d).

In some cases, the court also has discretion to determine the disposition level. *See In re Robinson*, 151 N.C. App. 733, 738 (2002) (court had discretion to impose either Level 2 or Level 3 disposition as juvenile committed offense classified as "violent" and had "low" delinquency history level; no abuse of discretion in ordering a Level 3 disposition because court based its order on juvenile's high risk of reoffending and needs of juvenile); *In re N.B.*, 167 N.C. App. 305, 311 (2004) (court had discretion to impose either Level 2 or Level 3 disposition because juvenile committed offense classified as "violent" and had "low" delinquency history level; no abuse of discretion in ordering Level 3 disposition based on juvenile's continued excessive absences from school).

Counsel should emphasize this statutory discretion to the court in arguing for an appropriate disposition at the lowest dispositional level. This is particularly important because after a juvenile is placed on Level 2, even for a low-level felony or Class A1 misdemeanor, the court may order commitment to a youth development center upon adjudication of a probation violation. G.S. 7B-2510(e); *see also infra* § 14.8E, Alternatives on Finding of a Violation.