

15.6 Term of Commitment

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A. Indefinite Term of at Least Six Months

Minimum term. Commitment is for an indefinite term of at least six months. G.S. 7B-2513(a); *see In re Allison*, 143 N.C. App. 586, 596 (2001) (statute does not violate the Equal Protection Clause by authorizing a longer period of confinement for a juvenile than could be imposed on an adult committing the same offense because a rational basis exists for disparate treatment of adults and children based on juvenile's need for supervision and control).

Maximum term. An indefinite commitment must end by the following birthdays of the juvenile pursuant to G.S. 7B-2513(a)(1)–(3):

- 21st birthday if the juvenile is committed for an offense that would be first-degree murder pursuant to G.S. 14-17, first-degree forcible rape pursuant to G.S. 14-27.21, first-degree statutory rape pursuant to G.S. 14-27.24, first-degree forcible sexual offense pursuant to G.S. 14-27.26, or first-degree statutory sexual offense pursuant to G.S. 14-27.29 if committed by an adult;
- 19th birthday if the juvenile is committed for an offense that would be a Class B1, B2, C, D, or E felony if committed by an adult, other than those listed immediately above;
- 18th birthday if the juvenile is committed for an offense other than those listed above.

Additionally, if the juvenile is adjudicated for a felony, the juvenile may not be committed to a term that exceeds the maximum term of imprisonment in the aggravated range for the felony that an adult with a prior record level VI could receive. G.S. 7B-2513; *In re C.J.J.*, 241 N.C. App. 655 (2015) (unpublished). If the juvenile is adjudicated for a misdemeanor, the juvenile may not be committed to a term that exceeds the maximum term of imprisonment for the misdemeanor than an adult with a prior conviction level III could receive. G.S. 7B-2513. As an exception, the juvenile's commitment may be extended beyond these limits under G.S. 7B-2515 if the Division determines that the juvenile's commitment should be extended to continue care or treatment under its statutory plan. G.S. 7B-2513(a); *see infra* § 15.7B, Assessment by the Division and Plan of Care.

For misdemeanor offenses, six months is both the minimum and maximum term of commitment because the maximum sentence an adult could receive for these offenses is less than six months. A commitment for a Class H or I felony could be similarly limited.

An adult could receive up to 24 months for a Class I felony and up to 39 months for a Class H felony. The maximum term of a juvenile's commitment for these offenses might therefore expire before the juvenile's 18th birthday. The Division may extend commitment beyond the maximum adult sentence in some circumstances. *See infra* 15.6D, Extension of Commitment.

B. Definite Term

A juvenile who is at least 14 years old, who has been previously adjudicated delinquent for two or more felony offenses and who has previously been committed, may be committed to a definite term of not less than six months and not more than two years. G.S. 7B-2513(b).

C. Credit for Time in Detention Before Disposition

In *In re D.L.H.*, 364 N.C. 214, 216 (2010), the Supreme Court of North Carolina held that trial courts are not required to give credit for time served in secure custody before disposition. The opinion overruled prior decisions on the question by the court of appeals, such as *In re R.T.L.*, 183 N.C. App. 299 (2007) (unpublished), and *In re Allison*, 143 N.C. App. 586 (2001). Although trial courts are not required to give juveniles credit for time spent in secure custody, courts are not prohibited from taking the time into account when considering the most appropriate disposition for the juvenile. Courts have considerable leeway at the dispositional hearing. *See In re Doe*, 329 N.C. 743, 749 (1991) ("Flexibility in determining dispositions was one of the aims of the General Assembly in drafting the Juvenile Code."). According to G.S. 7B-2500, a dispositional order should promote public safety, emphasize accountability and responsibility, and provide the appropriate consequences, treatment, training, and rehabilitation to assist the juvenile in becoming a responsible and productive member of the community. If the juvenile spent a significant amount of time in secure custody or received services before the dispositional hearing, counsel should argue that many of the purposes of disposition have already been met.

D. Extension of Commitment

The Division may extend commitment beyond the maximum adult sentence or beyond the juvenile's 18th birthday if it determines that extension will promote protection of the public and will be likely to lead to further rehabilitation. G.S. 7B-2515(a). It must also determine that the statutorily-mandated plan of care needs to be continued for an additional period of time. G.S. 7B-2513(a). The juvenile has the right to contest the proposed extension at a review hearing.

The Division may determine that a juvenile's commitment should be extended if it decides that the juvenile needs additional treatment or rehabilitation. If the Division determines that commitment should be extended beyond the maximum adult sentence or past the juvenile's 18th birthday, it must notify the juvenile and the juvenile's parent, guardian, or custodian in writing at least 30 days in advance of those dates. G.S. 7B-

2515(a); *In re J.L.H.*, 230 N.C. App. 214, 222 (2013) (holding that oral notice that the juvenile's commitment would be extended did not satisfy G.S. 7B-2515).

A court review of the Division's decision to extend commitment may be requested by the juvenile and the juvenile's parent, guardian, or custodian. G.S. 7B-2515(c). If a review is requested, the court must hold a hearing. The statute does not provide procedures for this hearing or specify that the juvenile must be represented at the hearing. However, a juvenile has the right to counsel in "all proceedings" pursuant to G.S. 7B-2000 and therefore should be entitled to representation. Additionally, a juvenile should be afforded counsel because an extension of commitment is a restraint on the juvenile's liberty that was not imposed by the original disposition.