Chapter 13
Dispositional Hearings

13.1 Overview

Following an adjudication of delinquency, the court proceeds to a dispositional hearing for entry of an order of disposition within the statutory alternatives. The court must determine the proper disposition level based on both the seriousness of the offense adjudicated and the juvenile's history of delinquency. Once the court determines the disposition level, it must order a disposition that meets the needs of the juvenile and provides for protection of the public. Statutory alternatives range from dismissal of the case to commitment to the Division of Adult Correction and Juvenile Justice. Counsel should advise the juvenile of possible dispositions within the available dispositional alternatives but must advocate for the disposition desired by the juvenile.

This chapter will review dispositional hearing procedures and statutory provisions for determining the classification of the offense and the juvenile's delinquency history level. Alternatives for each dispositional level and the court's discretion within the statutory mandates are discussed.

13.2 Terminology Used in this Chapter

Delinquency history level determines the permissible dispositional alternatives based on points assigned for the juvenile's prior adjudications and the classification of the current adjudicated offense. *See infra* § 13.7, Delinquency History Levels and Offense Classification.

Division is the Division of Adult Correction and Juvenile Justice of the Department of Public Safety. G.S. 7B-1501(10a).

Disposition is the order entered by the court following an adjudication of delinquency. A dispositional hearing is held, which may be informal, for the court to consider the

predisposition report, along with evidence from the State and the juvenile. The court must order a disposition within the statutory guidelines based on both the seriousness of the offense adjudicated and the juvenile's history of delinquency.

Predisposition report is prepared by a juvenile court counselor and contains information regarding the juvenile and recommendations for disposition. The predisposition report must contain a risk and needs assessment and is submitted at the dispositional hearing. G.S. 7B-2413; *see infra* § 13.4, Predisposition Investigation and Report.

A risk and needs assessment is attached to the predisposition report submitted by the juvenile court counselor at the dispositional hearing. It must contain information regarding the juvenile's social, medical, psychiatric, psychological, and educational history, as well as any factors indicating the probability of the juvenile committing further delinquent acts. G.S. 7B-2413; *see infra* § 13.4B, Contents of Report; § 13.4C, Risk Factors.

13.3 Preliminary Matters

A. Continuance of Dispositional Hearing

After adjudication the court may continue the dispositional hearing for preparation of the predisposition report and risk and needs assessment or at the request of the juvenile. G.S. 7B-2413, 7B-2501(b); *see also In re Vinson*, 298 N.C. 640, 661–62 (1979) (stating that dispositional hearing must be continued at juvenile's request under recently enacted G.S. 7A-639 (now G.S. 7B-2413), G.S. 7A-640 (now G.S. 7B-2501(a),(b)), and G.S. 7A-632 (now G.S. 7B-2406); case decided under earlier, different version of Code and remanded on other grounds). The statute providing for continuances under the hearing procedures statute, G.S. 7B-2406, has been held to apply to dispositional hearings, giving the court discretion to continue a dispositional hearing "for good cause." *In re R.D.R.*, 175 N.C. App. 397, 401 (2006) (court had discretion to continue disposition on its own motion for one week, until adjudicatory date for another petition involving juvenile). This statute states that the continuance is only "for as long as is reasonably required to receive" evidence or other information. G.S. 7B-2406.

If the juvenile is opposed to a continuance of disposition, counsel should cite the statute setting forth that one of the purposes of the subchapter on delinquent juveniles is to provide "swift, effective dispositions." G.S. 7B-1500(2)a. Additionally, G.S. 7B-2413 provides that the court "shall proceed to the dispositional hearing upon receipt of the predisposition report," indicating that the dispositional hearing should not be continued in the absence of a sufficient reason if the report has been prepared.

If the court continues the dispositional hearing for more than sixty days after adjudication and the juvenile appeals the adjudication order (permissible under G.S. 7B-2602), the trial court is divested of jurisdiction over the case and may not conduct a dispositional hearing while the appeal is pending. *In re J.F.*, 237 N.C. App. 218, 228 (2014).

B. Secure Custody Pending Dispositional Hearing

The court may order the juvenile into secure custody after an adjudication of delinquency pending the dispositional hearing. G.S. 7B-1903(c). This will not be an issue if disposition immediately follows adjudication. There may be reasons for a continuance, however, such as the need for preparation of a predisposition report or the juvenile's need for time to subpoena witnesses or documents.

If the court indicates that it is considering secure custody pending disposition, counsel should consider arguing that secure custody is not warranted. The criteria for secured custody in G.S. 7B-1903(b)(1)–(6) may apply at this stage of the proceedings and at least provides guidance on deciding whether secure custody is warranted. For example, if the juvenile was adjudicated for a misdemeanor that did not involve dangerous conduct and the juvenile did not miss any court dates, counsel should assert that there are insufficient grounds to place the juvenile in secure custody.

If the court orders the juvenile to be placed in secure custody, it must issue a written order with "appropriate findings of fact." G.S. 7B-1903(c). The court must also hold review hearings every 10 calendar days. *Id.* The juvenile may waive review hearings for up to 30 calendar days. *Id*.

For a further discussion of secure custody after adjudication, see "Criteria for secure custody" in § 8.6G, Secure Custody Following Adjudication of Delinquency.

13.4 Predisposition Investigation and Report

A. Consent for Preparation of the Report

The juvenile court counselor must obtain consent of the juvenile, the juvenile's parent, guardian, or custodian, or the juvenile's attorney to prepare the predisposition report and risk and needs assessment (also called the disposition report) before adjudication. G.S. 7B-2413. Without consent, the predisposition report cannot be prepared until after an adjudication, and the dispositional hearing will be continued unless the court makes a written finding that a report is not needed for disposition to proceed. *Id*. This consent is typically granted by the juvenile or a parent, guardian, or custodian at the intake meeting with the court counselor. *See infra* Appendix 13-1: Authorization to Prepare Pre-Disposition Report. If the juvenile or the juvenile's parents consent to preparation of the pre-disposition report before adjudication, counsel should advise the juvenile and the juvenile's parents that they should not discuss the allegations in the petition with the court counselor.

In most cases it will be beneficial to the juvenile for the report to be written before adjudication. If the petition is dismissed at adjudication, the report is of no consequence. If the juvenile is found to be delinquent, having the prepared report may prevent the need for a continuance. This is particularly important if the juvenile is being held in secure

custody. It will also give counsel more time to review the report, affording the opportunity to bring factual mistakes to the attention of the court counselor, to provide positive information to the court counselor that was omitted, and to subpoena witnesses regarding the information in the report.

B. Contents of Report

A predisposition report prepared by the juvenile court counselor must be submitted before the dispositional hearing. A risk and needs assessment, which is a comprehensive evaluation of the juvenile, must be part of the predisposition report. The risk and needs assessment must contain information regarding the juvenile's social, medical, psychiatric, psychological, and educational history. G.S. 7B-2413.

C. Risk Factors

G.S. 7B-2413 require that the report include any factors indicating the probability that the juvenile will commit further offenses. Counsel should review the court counselor's file and be prepared to cross-examine the juvenile court counselor and subpoena necessary witnesses about any asserted factors. Through cross-examination and direct testimony from the juvenile's witnesses, mistakes in the report may be corrected and positive information elicited.

Because the section of the report on risk factors is more subjective, there may be more reason to cross-examine the juvenile court counselor about its contents, especially if the report concludes that there is a high risk of the juvenile committing further delinquent acts or otherwise contains information that could be harmful to the juvenile. Cross-examination should explore whether the risk factors are based on incorrect information or faulty assumptions. Counsel should be careful in questioning, however, because it might allow the juvenile court counselor to discuss the risk factors in more detail to the detriment of the juvenile's case. An alternative is to argue that the factors listed do not put the juvenile at risk for re-offending or that the juvenile court counselor has made unwarranted or contradictory assumptions.

D. Right to Review before Dispositional Hearing

The juvenile, as well as counsel, has the right to review the predisposition report with the attached risk and needs assessment before the dispositional hearing. G.S. 7B-2413. However, the trial court may withhold the report if it determines that disclosure of the report would "seriously harm the treatment or rehabilitation of the juvenile or would violate a promise of confidentiality." *Id.*

In many districts the report is presented to counsel at the same time the report is presented to the court, affording counsel little time to review the report and consult with the juvenile. Counsel should consider pressing for delivery of the report before the hearing or requesting additional time to review the report.

Some juveniles will want to read the report, although others may be satisfied if counsel explains it to them. If the juvenile wants to read the report, counsel should review it with the juvenile to assist in interpretation.

Although the statute concerning the predisposition report does not specify a parent, guardian, or custodian as a person entitled to review the report, these people may have the right to do so pursuant to their statutory right to review files concerning the juvenile. *See* G.S. 7B-3001. Because the statutory right is not clear, counsel should direct the parent, guardian, or custodian to address a request for the predisposition report to the court.

E. Right to Present Rebuttal Evidence to Predisposition Report

The juvenile and the juvenile's parent, guardian, or custodian are entitled to present evidence to rebut the information in the predisposition report. G.S. 7B-2413. Both the juvenile and the juvenile's parent, guardian, or custodian are generally entitled to present evidence at disposition and to present a proposed dispositional plan. G.S. 7B-2501; *see supra* "Disposition" in § 3.5E, Parent, Guardian, or Custodian. Counsel should present rebuttal evidence as well as positive information regarding the juvenile.

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).

13.6 Dispositional Alternatives

A. Purpose of Disposition

The philosophy underlying dispositional alternatives available under the Juvenile Code was changed by the repeal of former G.S. 7A-646, which required that the court impose the least restrictive dispositional alternative and order commitment to the Division of Youth Services only after other alternatives were found to be inappropriate or were proven to be unsuccessful. Under the current statute, G.S. 7B-2501, the court must balance the needs of the juvenile with the need for public safety within the permissible dispositional alternatives. It remains the role of counsel to advocate on behalf of the juvenile for the least restrictive and least punitive disposition desired by the juvenile.

B. Statutory Categories

The court must choose dispositional alternatives within the appropriate dispositional level, which is determined by the juvenile delinquency history level and the offense classification. *See infra* § 13.7, Delinquency History Levels and Offense Classification. There are 24 dispositional alternatives. G.S. 7B-2506(1) through (24). Some Level 1 and Level 2 alternatives are identical except that a more severe disposition is allowed under Level 2. For example, alternative (4) provides for restitution up to $500, and alternative (22) provides for restitution over $500. Likewise, alternative (6) allows up to 100 hours of community service, and alternative (23) allows up to 200 hours; alternative (12) provides for a limit of five 24-hour periods of intermittent detention, and alternative (20) provides for up to fourteen 24-hour periods.

Each alternative is described briefly below, along with case law applicable to that alternative. Within the dispositional limits for each class of offense and delinquency history level under G.S. 7B-2508, the court may:

1. If a juvenile needs more adequate care or supervision, or is in need of placement:

   a. require supervision in the home by a designated person or agency, subject to court-ordered conditions;
   b. make a change in the juvenile's custody; or
   c. place the juvenile in the custody of the department of social services.

2. Excuse the juvenile from compulsory school attendance if the court finds that a suitable alternative plan can be arranged.

3. Order the juvenile to cooperate with a community-based program, an intensive substance abuse program, or a residential or nonresidential program, not to exceed 12 months.

   - *In re M.A.B.*, 170 N.C. App. 192, 194 (2005) (court did not improperly delegate its authority under G.S. 7B-2506(3) by ordering juvenile to cooperate with placement

in a residential or nonresidential treatment program as directed by juvenile court counselor or mental health agency, as court ordered participation in program but allowed another person or agency to determine specifics)

- *In re S.R.S.*, 180 N.C. App. 151, 159 (2006) (citing *Hartsock*, below, the Court of Appeals held that the trial court improperly delegated authority to juvenile court counselor to decide on type and provider of counseling)

- *In re Hartsock*, 158 N.C. App. 287, 292 (2003) (court could not delegate its authority under G.S. 7B-2506(14) to juvenile court counselor or counselor from treatment program to place juvenile in residential treatment)

4. Require restitution up to $500 payable within 12 months.

   - *In re D.A.Q.*, 214 N.C. App. 535, 538 (2011) (court erred by failing to find that restitution was in the juvenile's best interest before ordering the juvenile to pay restitution)

   - *In re Z.A.K.*, 189 N.C. App. 354, 362 (2008) (court improperly ordered restitution without finding that restitution was in the juvenile's best interest)

   - *In re M.A.B.*, 170 N.C. App. 192, 194 (2005) (court did not improperly delegate authority by ordering juvenile to pay up to $500 restitution payable within 12 months with amount to be determined on submission of medical bills to court)

   - *In re McDonald*, 133 N.C. App. 433, 436 (1999) (court erred in ordering juvenile to pay $200 restitution as it failed to make findings of fact regarding amount of damage suffered by victim and only evidence presented were pictures of damaged property)

5. Impose a fine.

6. Order up to 100 hours of supervised community service to be done within 12 months.

7. Order participation in the victim-offender reconciliation program.

8. Place the juvenile on probation under supervision of the juvenile court counselor. *See infra* § 13.6C, Probation.

9. Prohibit the juvenile from obtaining a driver's license for as long as the juvenile is under the court's jurisdiction.

10. Impose a curfew.

11. Order the juvenile not to associate with specified persons or be in specified places.

12. Impose intermittent detention, limited to five 24-hour periods.

- *In re Hartsock*, 158 N.C. App. 287, 292 (2003) (order for intermittent confinement of no effect as court failed to specify when confinement would occur; delegation of authority would have been contrary to express language of statute)

13. Order placement in a wilderness program.

14. Order placement in a residential treatment facility, an intensive nonresidential treatment program, an intensive substance abuse program, or a group home other than a multi-purpose group home operated by a State agency.

- *In re Hartsock*, 158 N.C. App. 287, 292 (2003) (court could not delegate its authority under G.S. 7B-2506(14) to juvenile court counselor or counselor from treatment program to place juvenile in residential treatment)

- *In re M.A.B.*, 170 N.C. App. 192, 194 (2005) (court did not improperly delegate its authority under G.S. 7B-2506(3) by ordering juvenile to cooperate with placement in residential or nonresidential treatment program as directed by juvenile court counselor or mental health agency, as court ordered participation in program but left specifics to another person or agency)

- *In re S.R.S.*, 180 N.C. App. 151, 159 (2006) (citing *Hartsock*, above, the Court of Appeals held that the trial court improperly delegated authority to juvenile court counselor to decide whether there would be out-of-home placement)

15. Place the juvenile on intensive probation under the supervision of a juvenile court counselor. *See infra* § 13.6C, Probation.

16. Order the juvenile to cooperate with a supervised day program under specified terms and conditions.

17. Order the juvenile to participate in a regimented training program. (There are no programs of this type, also called "boot camps," in North Carolina as of the writing of this manual.)

18. Order house arrest.

19. Suspend imposition of a more severe, permissible disposition on the juvenile's agreement to court-imposed conditions.

20. Order confinement in detention for up to fourteen 24-hour periods, not to be imposed consecutively with any intermittent detention under (12) above.

- *In re Hartsock*, 158 N.C. App. 287, 292 (2003) (order for intermittent confinement of no effect as court failed to specify when confinement would occur; delegation of authority would have been contrary to express language of statute)

21. Order residential placement in a multi-purpose group home operated by a State agency.

22. Order restitution of more than $500 payable within 12 months.

- *In re Schrimpsher*, 143 N.C. App. 461, 465–66 (2001) (court must make findings of fact to determine whether others were jointly and severally liable for damages, total amount of damages, and amount of damages attributable to juvenile)

23. Order up to 200 hours supervised community service.

24. Commit the juvenile to the Division for placement in a youth development center, also known as "training school," for a period of not less than six months.

- *In re T.B.*, 178 N.C. App. 542, 546 (2006) (commitment to Department of Youth Services may be ordered only for juvenile who is eligible to receive Level 3 disposition)

- *In re D.A.F.*, 179 N.C. App. 832, 835 (2006) (trial court did not abuse its discretion in ordering the juvenile to be committed to a youth detention center because it was a "reasoned decision" based on factors regarding juvenile's needs and risk to public safety)

C. Probation

The court may place the juvenile either on probation or intensive probation. G.S. 7B-2506(8), (15). During the probationary period, the juvenile is under the supervision of a juvenile court counselor and may be subject to conditions ordered by the court. The juvenile may be brought back into court on a motion alleging violation of the conditions of probation, possibly subjecting the juvenile to further dispositional orders of the court. G.S. 7B-2510(e). If the court indicates at disposition that it is considering probation, counsel should consider arguing against probation or seeking to limit the conditions imposed by the court. *See infra* § 14.3, When Probation May Be Ordered.

The conditions of probation are often one or more of the other dispositional alternatives listed in G.S. 7B-2506. *See infra* Chapter 14, Probation.

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.

13.8 Dispositional Limits for Each Class of Offense and History Level

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; s*ee 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.

13.9 Registration of Juvenile Adjudicated for Certain Sex Crimes

Registration requirements. A juvenile convicted as an adult of an offense requiring sex offender registration or monitoring is subject to the requirements, restrictions, and procedures applicable to adults, which are numerous. *See* G.S. 14-208.32 (so stating). If adjudicated in juvenile court, the restrictions are fewer and the offenses triggering them narrower.

A juvenile who is at least 11 years old may be ordered to register with the county sheriff for a sex crime if the court finds the juvenile to be a danger to the community and the juvenile is adjudicated delinquent for a violation of one of the following criminal statutes: G.S. 14-27.21 (first-degree forcible rape), G.S. 14-27.22 (second degree forcible rape), G.S. 14-27.24 (first-degree statutory rape), G.S. 14-27.26 (first-degree forcible sexual offense), G.S. 14-27.27 (second-degree forcible sexual offense), or G.S. 14-27.29 (first-degree statutory sexual offense). G.S. 7B-2509. The registration statute also refers to G.S. 14-27.6, but that statute has been repealed. Also included are an attempt, conspiracy, or solicitation of another to commit any of the offenses, or aiding or abetting any of the offenses. G.S. 14-208.26(a1). The court must specifically find that the juvenile is a danger to the community before ordering the juvenile to register.

If the court orders the juvenile to register, it must conduct the notification procedures specified in G.S. 14-208.8. The court must inform the juvenile of the requirement to register and obtain a statement signed by the juvenile stating that the juvenile was informed of the registration requirement. The court must also obtain biographical information from the juvenile, any aliases the juvenile might have, a statement indicating whether the juvenile is a student, and any online identifier the juvenile uses. G.S. 14-208.8(a)(2). The chief court counselor, not the juvenile, is responsible for filing the registration information with the sheriff. G.S. 14-208.26(b).

The Department of Public Safety must include the registration information in the Criminal Information Network. G.S. 14-208.31. That statute provides that the Department must maintain the registration information permanently. The information does not appear to be subject to expunction because all of the triggering offenses are Class C felonies or higher and therefore not subject to expunction under the applicable statutes. *See infra* Chapter 17, Expunction of Juvenile Records.

The information must also be maintained separately by the sheriff. It may be released only to law enforcement agencies and local boards of education. G.S. 14-208.29(b). The information is not a public record and not open to public inspection. G.S. 14-208.29(a). The statute also states that the information must not be included in the county or statewide registries of adults convicted of sex crimes or be made available to the public through the internet. *Id.*; *see also* G.S. 14-208.31 (stating that information maintained by Department of Public Safety is confidential).

Every year on the anniversary of the juvenile's initial registration and six months after that date, the sheriff must mail a verification form to the juvenile court counselor

assigned to the juvenile. G.S. 14-208.28. The form must be signed by the court counselor and the juvenile and must indicate whether the juvenile still resides at the address last reported to the sheriff. If the juvenile has a new address, the court counselor must include the new address on the form. The court counselor must also return the form to the sheriff within three business days of receiving the form.

If the juvenile is ordered to register, the registration requirement automatically terminates on the juvenile's eighteenth birthday or when the jurisdiction of the juvenile court ends, whichever first occurs. G.S. 14-208.30.

Other requirements based on sex crimes. Adults convicted of sex crimes are subject to an array of regulations and restrictions, such as satellite-based monitoring and limitations on areas where they can reside and premises where they can go. It is clear that some of these provisions do not apply to juveniles. For example, juveniles are not subject to satellite-based monitoring. The satellite-based monitoring program is generally limited to individuals who are "convicted of a reportable conviction." G.S. 14-208.40(a). An adjudication is not a conviction, G.S. 7B-2412, and thus does not subject the juvenile to satellite-based monitoring. Likewise, the sexually violent predator registration program, which provides for lifetime registration, requires a conviction for a crime classified as a sexually violent offense. G.S. 14-208.20. Therefore, that program, too, does not apply to a juvenile adjudicated of a sex crime in juvenile court.

It is less clear whether other provisions applicable to adults, such as residential and premises restrictions or the crime of failure to register, apply to juveniles adjudicated of sex crimes. On the one hand, these provisions state that they apply to "registrants" or individuals "required to register under this Article"—that is, Article 27A of G.S. Chapter 14. *See, e.g.*, G.S. 14-208.11 (penalties for the failure to register), 14-208.16 (residential restrictions), and 14-208.18 (premises restrictions). The juvenile registry is one of four parts in Article 27A, which includes the residential and premises restrictions and the crime of failure to register.

On the other hand, the term "statewide registry" is defined under G.S. 14-208.6(8) as the adult registry described in G.S. 14-208.14 and does not include the juvenile registry. Thus, the general references to "registrants" in the various restrictions noted above do not necessarily apply to juvenile registrants. To the contrary, G.S. 14-208.26(a) states that a juvenile required to register on the juvenile registry is only required to register and maintain that registration as provided by "this Part"—that is, Part 4 of Article 27A—which does not contain any residential or premises restrictions or penalties for the failure to register or maintain registration. Those provisions are contained in Parts 2 and 3 of Article 27A. G.S. 14-208.32 states that the requirements of Parts 2 and 3 apply only to juveniles convicted as adults, suggesting that the residential, premises, and other restrictions in Parts 2 and 3 do not apply to juveniles on the juvenile registry.

Beyond a close reading of the relevant statutes, some of the restrictions applicable to adults are a poor fit for those on the juvenile registry. For example, some of the adult failure to register provisions in G.S. 14-208.11 center on the adult's failure to report to

the sheriff or return verification forms. However, the juvenile court counselor, not the juvenile registrant, is required to complete those responsibilities. G.S. 14-208.26(b), 14-208.28. As a practical matter, the residential and premises restrictions are also difficult to apply to juveniles. If applicable, those restrictions could bar a juvenile from living at home with parents or from being present at any place intended for the use, care, or supervision of minors. It seems unlikely that the General Assembly intended this result.

Although there is no case law addressing whether residential and premises restrictions or the crime of failure to register apply to juveniles, counsel should argue that those provisions do not apply if the State intends charge a violation against a juvenile.

Impact of potential federal requirements. In 2006, Congress enacted the Adam Walsh Child Protection and Safety Act, which set federal sex offender registration requirements. The legislation provided financial incentives for states to create comparable registration requirements for convictions and adjudications for sex crimes. *In re McClain*, 226 N.C. App. 465, 468 (2013). North Carolina, like many other states, did not adopt the more stringent federal requirements for juveniles. *See* Jamie Markham, *The SORNA-Compliance Dog That Didn't Bark*, N.C. CRIM. L., UNC SCH. OF GOV'T BLOG (June 23, 2011). Nevertheless, counsel must advise juvenile clients adjudicated of sex crimes about the possible need for registration if they move to a state that has adopted the federal standards or if North Carolina adopts a fully compliant registration regime in the future. The law in other states is beyond the scope of this manual. For more information, consult the federal Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking website.

13.10 Dispositional Order

A dispositional order must be in writing and must contain appropriate findings of fact and conclusions of law. G.S. 7B-2512(a). The findings must demonstrate that the court considered the factors under G.S. 7B-2501(c), discussed *supra* in "Dispositional guidelines" in § 13.5A, Conduct of the Hearing. *In re K.C.*, 226 N.C. App. 452, 462 (2013). If the court fails to make written findings on those factors, the dispositional order is subject to reversal. *In re V.M.*, 211 N.C. 389, 390–91 (2011).

At a minimum, the dispositional order must indicate that the court considered all of the factors in G.S. 7B-2501(c). Some cases indicate that the court must make findings on all of the factors and that reversal is required if the court makes findings on some but not all of the statutory factors. *See, e.g.*, *In re K.C.*, 226 N.C. App. at 462–63. In *In re D.E.P.*, 796 S.E.2d 509 (2017), however, the Court of Appeals held that prior decisions did not impose such a requirement. Reviewing earlier decisions, the court asserted that it was not overruling decisions of other panels because there was "no support for a conclusion that in every case the 'appropriate' findings of fact must make reference to all of the factors listed in [G.S.] 7B-2501(c) . . . ." The court in *In re D.E.P.* concluded that a trial court's findings of fact are sufficient if they demonstrate consideration of all of the statutory factors.

In unpublished opinions, the Court of Appeals has also held that a court may satisfy its fact-finding duty under G.S. 7B-2512 by incorporating reports and assessments into the dispositional order. *In re T.L.M.*, 787 S.E.2d 464 (2016) (unpublished); *In re D.O.B.*, 213 N.C. App. 422 (2011) (unpublished). Incorporation may not always be adequate, however. Cases have recognized that the trial court "should not broadly incorporate . . . written reports from outside sources as its findings of fact," *In re J.S.*, 165 N.C. App. 509, 511 (2004), or use reports "as a substitute for its own independent review." *In re M.R.D.C.*, 166 N.C. App. 693, 698 (2004). In *In re V.M.*, 211 N.C. App. 389, 392 (2011), the trial court checked boxes on the dispositional order stating that the juvenile was adjudicated for a violent or serious offense and that he had violated the terms of probation. The court also incorporated reports and assessments into the order. The Court of Appeals reversed the dispositional order because the order contained insufficient findings of fact.

The court must state with particularity, both orally and in the written order, the precise dispositional terms, including the kind and duration, as well as the person who is responsible for implementation of the disposition and the person or agency granted custody if there is an order changing custody. G.S. 7B-2512(a). In addition, the court must provide information about the possibility of expunction of juvenile records either orally or in writing. G.S. 7B-2512(b). For information on expunging juvenile court records, *see infra* Chapter 17, Expunction of Juvenile Records.

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.