

DISPOSITION: PREPARATION, SPECIAL ISSUES AND SELECTED CASES

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SIX STEPS TO PREPARE FOR DISPOSITION

- I. Research the prior delinquency history (“prior record”) of the juvenile
 - A. research the file (known as the “juvenile record” or the “clerk’s file”) at the clerk’s office (*see Prior Record and Scoring Prior Record forms*)
 - B. determine the possible disposition level on disposition chart (*see Disposition Chart*)
 - C. request a print out of the NC-JOIN (North Carolina Juvenile Online Information Network) record from your court counselor’s office (*see Request for Release of Department of Juvenile Justice File form*)
 - D. consult with court counselor from other jurisdiction(s), if the juvenile has a delinquency history in other districts

- II. Know your disposition alternatives
 - A. study the statutory list: §7B-2506 (*see Juvenile Disposition Options chart*)
 - B. compile a list of local, regional, and state alternatives
 1. receive information from your local court counselor’s office
 2. obtain information from local services directly
 3. consult with other local attorneys
 4. attend your local Juvenile Crime Prevention Council (JCPC) meeting
 5. contact the Office of the Juvenile Defender

- III. Discuss recommendations with the court counselor and the assistant district attorney
 - A. receive the pre-disposition report
 1. *when* can you receive the report?
 - Some local rules provide for the report to be delivered a time certain before the hearing
 - Consider developing a procedure with your court counselor office to receive the reports prior to court

2. review the risk and needs assessments and juvenile/family data forms
 - a. risk and needs assessment
 - accuracy and information obtained
 - count point totals
 - b. juvenile/family data form
 - accuracy and information obtained
 - prior delinquency history listed
 - any information that is not “relevant, reliable and necessary” per §7B-2501(a)
- B. Discuss recommendations with the assistant district attorney and court counselor
 1. have a set day and time to meet
 2. be prepared with information and position
 3. be prepared with alternatives and options
- IV. Discuss recommendations and possible outcomes with the juvenile and the parent/guardian
- V. Prepare your own recommendations!
- VI. Object to information not “relevant, reliable and necessary” (§7B-2501(a)) and protect the record for appeal

SPECIAL DISPOSITIONAL ISSUES

I. Youth Development Centers

A. How does a juvenile get to a Youth Development Center? (*see Disposition Chart*)

- If adjudicated on a violent offense (A through E felony), the juvenile can be committed with any prior record.
- If adjudicated on a serious offense (F through I felony or A1 misdemeanor), the juvenile needs four or more prior points; but if the juvenile is on probation for a serious offense, is currently at Level 2, and violates probation, youth development center is an option for the court.
- If adjudicated on a minor offense, the juvenile needs to have been adjudicated of 4 or more prior offenses. Each successive offense is one that was committed after adjudication of the preceding offense.
- If disposition is Level 2, but the juvenile has been previously committed, the court may enter a Level 3 disposition.

B. Commitment is usually for an indefinite period. However, under §7B-2513(b), a juvenile may be committed to a definite term of not less than six months and no more than 2 years if the court finds that the juvenile is 14 or older, has been previously sent to the Youth Development Center, and has been previously adjudicated for two or more felony offenses.

II. Credit for time served

1. *In re Allison*, 143 N.C. App. 586, 547 S.E.2d 169 (2001).
The juvenile had been committed to training school, released on conditional release status, and violated the requirements of the conditional release. After admitting the violation, the juvenile remained in a detention center while pending disposition. The court found that the time spent in detention pending the re-commitment to training school could be counted against the remaining time to be served in training school.
2. *In the Matter of R.T.L.*, 2007 N.C. App. LEXIS 1025 (unpublished opinion).
The juvenile was entitled to a sentencing credit for time spent in detention prior to adjudication. The Court stated that under *Allison* the Court had previously determined that

the provisions of G.S. §15-196.1 (credit for time served) apply to juvenile offenders.

III. Detention (secure custody) pending placement: §7B-1903(c)

1. The court may order secure custody pending placement of the juvenile as ordered as part of disposition.
2. Note: does the requirement for review hearings under §7B-1906(b) apply?
 - Unfortunately, some placements can take a long time, even months, to materialize, while the juvenile remains in detention with no services or treatment. Juvenile defense counsel should always consider arguing that a juvenile pending placement is also entitled to 10-day review hearings.

SELECTED CASE LAW

DISPOSITIONAL ALTERNATIVES

In re McDonald, 133 N. C. App. 433, 515 S.E.2d 719 (1999)

The juvenile was adjudicated delinquent of injury to real property, spraying the message "Charles Manson Rules" on another person's property. Disposition was entered ordering the juvenile not to watch television for one year. The juvenile argued that this punishment violated the juvenile's First Amendment rights, but the Court of Appeals held the disposition constitutional. The Court found that the punishment was related to the delinquent conduct influenced by television (juvenile stated she saw a show on TV describing the criminal acts of Charles Manson).

<http://www.aoc.state.nc.us/www/public/coa/opinions/1999/981276-1.htm>

In the Matter of Jonathan Heil, 145 N.C. App. 24, 550 S.E.2d 815 (2001)

The juvenile was adjudicated delinquent of crime against nature. At disposition, the juvenile was committed to training school, but this sentence was suspended under a number of conditions, including that the juvenile pay restitution in the amount of \$1,305.00 to be paid to the North Carolina Victims Compensation Fund. The juvenile appealed, arguing that the trial court had not made certain findings under N.C.G.S. 7A-649(2) (now 7B-2506(4)) necessary to enter a finding of restitution, as well as ordering the parents to pay. The Court of Appeals agreed, holding that the trial court did not find 1) that payment of restitution was in the child's best interest, 2) that the juvenile had the ability to pay restitution, and 3) that the amount was supported by any evidence presented. The Court also held that the trial court did not have the authority to hold the parents responsible for paying restitution if the juvenile was unable to pay.

<http://www.aoc.state.nc.us/www/public/coa/opinions/2001/000679-1.htm>

In re M.E.B., 153 N.C. App. 278, 569 S.E.2d 683 (2002)

The juvenile was adjudicated delinquent of felony breaking and entering and felony possession of burglary tools. One condition of special probation was that the juvenile was to wear a sign stating, "I AM A JUVENILE CRIMINAL" whenever the juvenile was out in public for the rest of the school term. The Court of Appeals found this condition unlawful, stating that the sign amounted to disclosure to the public of the juvenile's status, which is protected under the Juvenile Code. The Court also found that the juvenile's opportunity not to wear the sign could only occur at home, effectively creating a house arrest situation, which was not authorized under the Code.

<http://www.aoc.state.nc.us/www/public/coa/opinions/2002/011323-1.htm>

In re J.B., 2005 N.C. LEXIS 1325 (2005)

The juvenile was adjudicated of involuntary manslaughter. At disposition, the court ordered the juvenile to abide by a number of conditions while on probation, including the special conditions of visiting and placing flowers on the victim's grave site on the anniversary of the victim's death and birth, wearing a necklace with a picture of the victim on it, and not participating in certain school activities such as sports and school dances. The juvenile appealed, arguing that the trial court abused its discretion by

ordering conditions which were not related to the juvenile's best interests. The Court Appeals affirmed the trial court, first noting that the trial court's requirement of probationary conditions should not be disturbed unless the court so abused its discretion that "it could not have been the result of a reasoned decision." Distinguishing the instant case from *In re M.E.B.*, 153 N.C. App. 278, 569 S.E.2d 683 (2002), the Court found that the probationary conditions required neither caused the juvenile to publicize his adjudication nor forced the juvenile to choose between public ridicule or removal from public sight. The Court also determined that the trial court did not fail to utilize certain testimony to fashion the conditions, nor did it fail to take into account the juvenile's individual needs in determining the condition of visiting the victim's gravesite without first consulting a therapist. (There was one dissent, which argued that the conditions of wearing the necklace and visiting the gravesite would actually not be in the juvenile's best interest and adverse to the juvenile's needs based on the evidence presented at disposition. The case was appealed to the Supreme Court and was affirmed without opinion)

<http://www.aoc.state.nc.us/www/public/coa/opinions/2005/040901-1.htm>

<http://www.aoc.state.nc.us/www/public/sc/opinions/2005/462-05-1.htm>

DISPOSITIONAL ORDERS AND OTHER ISSUES

In re Allison, 143 N.C. App. 586, 547 S.E.2d 169 (2001)

The juvenile was adjudicated delinquent under the former Juvenile Code for a number of offenses, violated probation and was committed to training school for an indefinite period not to exceed 450 days. Once released on conditional release status, the juvenile violated the requirements of the conditional release, including being found delinquent for the offenses of unauthorized use of a motor vehicle and resisting, delaying and obstructing a law enforcement officer. The juvenile admitting the violation of conditional release and was adjudicated delinquent of the new offenses. The trial court returned the juvenile to training school for 450 days for violating conditional release, as well as an additional commitment for a minimum of six months for the new offenses adjudicated. The juvenile appealed, arguing that the court could not commit her to training school for the six month period because it was longer than an adult could be sentenced to prison for the same offenses. The Court of Appeals affirmed the trial court decision, stating that because the commitment is "reasonably related to the purpose of the act" (to provide supervision and control rather than to punish wrongdoing), the apparent disparate treatment of adults and children is not unconstitutional under the Equal Protection Clause.

<http://www.aoc.state.nc.us/www/public/coa/opinions/2001/000705-1.htm>

In re John R. Ferrell, 162 N.C. App. 175, 589 S.E.2d 894 (2004)

The juvenile admitted responsibility for the charge of assault inflicting serious injury and was adjudicated delinquent. At the time of disposition, the juvenile was living with his mother. Based on information given to the court by the court counselor, the court transferred custody to the juvenile's father as a condition of disposition. The juvenile on appeal argued that the court failed to make findings of fact in the dispositional order supporting a change in custody. The Court of Appeals set aside the part of the order

changing custody, stating that under §7B-2501(c), the dispositional order failed to contain "appropriate findings of fact and conclusions of law" to support a change in custody.

<http://www.aoc.state.nc.us/www/public/coa/opinions/2004/021617-1.htm>

In the Matter of N.B., 167 N.C. App. 305, 605 S.E.2d 488 (2004)

The juvenile was adjudicated delinquent of assault with a deadly weapon inflicting serious injury. At disposition, the juvenile was sentenced at Level 3 and committed to a youth development center. The juvenile appealed, arguing that the trial court should not have sentenced her to a Level 3 disposition because she had no prior delinquency history and was shown to have a low risk of re-offending and a low need to be supervised by the court. The Court of Appeals disagreed, finding that the trial court no longer was mandated to find the "least restrictive alternative" for the juvenile. The Court ruled that the trial court had the discretion to sentence the juvenile at Level 3, and there was no indication that the court abused its discretion.

<http://www.aoc.state.nc.us/www/public/coa/opinions/2004/031653-1.htm>

<http://www.aoc.state.nc.us/www/public/sc/opinions/2005/168-04-1.htm>

In the Matter of: K.W., 2006 N.C. App. LEXIS 395 (**unpublished opinion**)

The juvenile was adjudicated delinquent of misdemeanor larceny in Bertie County and disposition was transferred to Northampton County. The trial court found the juvenile had four or more prior adjudications and committed the juvenile to a youth development center. The juvenile appealed, arguing that the trial court lacked sufficient proof of the juvenile's prior adjudications. The Court of Appeals disagreed, finding that under N. C. G. S. 7B-2507, prior adjudications may be proven by stipulation of the parties, an original or copy of the court record of the prior adjudication, a copy of the records maintained by the Division of Criminal Information or by the Department of Juvenile Justice, or by any other method found by the court to be reliable. The Court held that the evidence presented at trial, which was testimony on behalf of the Chief Court Counselor, a predisposition report presented by the court counselor's office which listed the prior adjudications, as well as testimony by the juvenile as to "the existence" of four prior adjudications, was sufficient to prove the prior adjudications.

<http://www.aoc.state.nc.us/www/public/coa/opinions/2006/unpub/050720-1.htm>

In the Matter of: T.B., 631 S.E. 2d 857 (2006)

The juvenile appealed from a dispositional order on June 1, 2004 committing the juvenile to a youth development center. The juvenile's prior court history included an adjudication on June 13, 2003 of a minor offense and sentenced at Level 1 for disposition. The juvenile then was found in violation of probation on April 28, 2004. At the dispositional phase of the probation hearing, the court ordered that the juvenile be placed on a "stayed commitment to training school." The court scheduled a review hearing to be held on June 1, 2004, at which time the court ordered the juvenile committed to a youth development center. The juvenile argued that the court did not have the authority to order a Level 3 disposition. The Court of Appeals agreed, finding that at the April 28, 2004 hearing, the trial court could only order a disposition at the "next higher level," which would be limited to a Level 2 disposition. Therefore,

disposition could not include a Level 3 commitment, whether or not the commitment was stayed.

<http://www.aoc.state.nc.us/www/public/coa/opinions/2006/050521-1.htm>

In Re: J.P.M., 2007 N.C. App. LEXIS 1289 (**unpublished opinion**)

The juvenile was found in violation of his probation and committed to a youth development center. The juvenile appealed, arguing that the trial court failed to make adequate findings of fact and conclusions of law in accordance with G.S. 7B-2412. The State argued that probation violations are governed exclusively by G.S. 7B-2510, and therefore the trial court need not make the findings required by G.S. 7B-2512. The Court of Appeals agreed with the juvenile, holding that in a dispositional hearing following a probation violation, the disposition order must be submitted along with adequately supportive findings of fact and conclusions of law. Appropriate findings of fact were not apparent in this case, and the case was remanded for a new dispositional hearing.

<http://www.aoc.state.nc.us/www/public/coa/opinions/2007/unpub/061269-1.htm>

DELEGATION OF AUTHORITY

In the Matter of Jessica Renea Hartsock, 158 N.C. App. 287, 580 S.E.2d 395 (2003)

The juvenile was adjudicated delinquent for possession of marijuana. As part of disposition, the juvenile was ordered to “cooperate with placement in a residential treatment facility if deemed necessary by MAJORS counselor or Juvenile Court Counselor.” The juvenile was also ordered to “be confined on an intermittent basis in an approved detention facility as follows...” The juvenile appealed, arguing that the trial court could not delegate its authority either to order placement in a residential treatment facility, or to order intermittent confinement. The Court of Appeals agreed, finding that N.C.G.S. 7B-2506 specifically provides the *court* with the sole discretion to order dispositional alternatives. The Court also found that the trial court failed to specify the time of confinement, therefore that portion of the order “[was] incomplete and [has] no effect.”

<http://www.aoc.state.nc.us/www/public/coa/opinions/2003/020912-1.htm>

In re M.A.B., 170 N.C. App. 611 S.E.2d 886 (2005)

The juvenile was adjudicated delinquent of assault inflicting serious injury. As part of disposition, the juvenile was ordered to pay “restitution in an amount to be determined,” and to “cooperate and participate in a residential treatment program as directed by court counselor or mental health agency.” The juvenile appealed, arguing that under *In re Hartsock* the court could not delegate its authority in determining the specifics of these dispositional alternatives. The Court of Appeals disagreed, distinguishing *Hartsock* by stating that 1) under N.C.G.S. 7B-2506 (4) the court may determine the amount of restitution, not making it mandatory for the trial court to determine the amount, and 2) the trial court ordered the actual participation in the treatment facility, but that the specifics of the program could be left up to the court counselor or mental health agency.

<http://www.aoc.state.nc.us/www/public/coa/opinions/2005/040859-1.htm>

In re S.R.S., 636 S.E.2d 277 (2006).

The juvenile was adjudicated of communicating threats. As part of the dispositional order, the court ordered that the juvenile abide by any rules set out by the Court Counselor including, but not limited to, curfew rules and rules regarding with whom the juvenile may associate, that the juvenile cooperate with any out of home placement if deemed necessary, or if arranged by the Court Counselor, and that the juvenile cooperate with any counseling or assessment recommended by the Court Counselor. The juvenile appealed, arguing that the trial court had improperly delegated its authority to order certain conditions of disposition as held under *In re Hartsock*, 158 N.C. App. 287, 580 S.E.2d 395 (2003). The Court of Appeals first noted that although *Hartsock* concerned dispositional alternatives from an adjudication of delinquency and the instant case concerned dispositional alternatives from an adjudication of a probation violation, that *Hartsock* was still “persuasive and applicable.” While the Court found no fault with the first condition challenged by the juvenile, the Court did hold that the other conditions constituted an impermissible delegation of authority. The Court held that if the trial court felt that out of home placement was necessary, the court would have ordered such placement. The Court similarly held that if the trial court wished for the juvenile to participate in an assessment or counseling, then the trial court should have ordered a specific assessment or specific counseling for the juvenile.

<http://www.aoc.state.nc.us/www/public/coa/opinions/2006/060047-1.htm>

In the Matter of: V.A.L., A Minor Child, 652 S.E.2d 726 (2007)

The juvenile admitted to a violation of probation. As a new condition of probation, the trial court ordered that the juvenile cooperate with an out of home placement. The juvenile appealed, arguing that the trial court erred by not designating a specific out of home placement and therefore improperly delegating its authority. The Court of Appeals disagreed, finding that in *In re Hartsock*, 158 N.C. App. 287 (2003) and *In re S.R.S.*, 180 N.C. App. 151 (2006), the Court held that it was impermissible to allow another entity to decide whether or not cooperation with placement in a facility was necessary. However, the Court held in *In re. M.A.B.*, 170 N.C. App. 192 (2005) that it was not improper to order a juvenile to cooperate in a program *as directed* by another entity. The Court found in the instant case that not specifying the details of the placement was not an improper delegation of authority by the trial court.

<http://www.aoc.state.nc.us/www/public/coa/opinions/2007/070242-1.htm>