

DISPOSITIONS: OPTIONS FOR YOUR CLIENT

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Dispositions (§7B-2500 through §7B-2508)

- I. Research the prior record of the juvenile
 - A. research file at the clerk's office (*see Prior Record and Scoring Prior Record forms*)
 - B. determine possible disposition level on disposition chart (*see Disposition Chart*)
 - C. consult NC-JOIN (North Carolina Juvenile Online Information Network) record (*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. attend your local Juvenile Crime Prevention Council (JCPC) meeting
 4. contact the Office of the Juvenile Defender
- III. Discuss recommendations with the court counselor and the assistant district attorney
 - A. receive 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. check the risk and needs assessments point totals

- IV. Discuss recommendations and possible outcomes with the juvenile and the family/guardian
- V. Prepare your own recommendations!
- VI. Object to information not “relevant, reliable and necessary” (§7B-2501(a)) and protect the record for appeal
- VII. Special Issues:
 - A. Youth Development Centers
 - 1. How does one get to the Youth Development Center (i.e. training school)? (*see Disposition Chart*)
 - 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 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 disposition is Level 2, but the juvenile has been previously committed, the court may enter a Level 3 disposition.
 - If adjudicated on a violent offense (A through E felony), the juvenile can be committed with any prior record.
 - 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.
 - C. 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.

D. 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 N. C. Gen. Stat. § 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.

VIII. Case Law

- *In Re McDonald*, 133 N.C. App. 433, 515 S.E.2d 719 (1999). Juvenile adjudicated delinquent of injury to real property, spraying the message "Charles Manson Rules" on another person's property. Disposition was entered ordering juvenile not to watch television for one year. The juvenile argued that this punishment violated the juvenile's First Amendment rights, but the Court 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).
- *In Re M.E.B.*, 153 N.C. App. 278, 569 S.E.2d 683 (2002). Juvenile 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 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.

- *In Re John R. Ferrell, Juvenile*, 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-25019(c), the dispositional order failed to contain "appropriate findings of fact and conclusions of law" to support a change in custody.
- *In the Matter of: Travis Ray Butts*, 358 N.C. 370, 595 S.E.2d 146 (2004). Juvenile was adjudicated of first-degree sex offense. Among other issues, the juvenile argued that the court erred by imposing a condition of probation that the juvenile must admit his guilt in order to participate in sex offender treatment. The juvenile argued that this condition violated his Fifth Amendment right protecting against self-incrimination as stated under the United States Constitution. The Court of Appeals agreed, analogizing the case to the rule of law in adult criminal court, which protects a convicted sex offender's right not to admit guilt for the purpose of sex offender treatment. The court did note, however, that though the juvenile need not admit guilt as a condition of probation, the court can still order the juvenile engage honestly as part of any treatment or counseling. The Supreme Court affirmed the Court of Appeals decision, noting that review had been improperly granted.
- *In the Matter of T.P.*, 2004 N.C. App. LEXIS 1520 (2004) (unpublished opinion). The juvenile was adjudicated of misdemeanor breaking and entering, felony breaking and entering, felony larceny and injury to real property. Disposition was entered and consolidated on all four charges. The juvenile filed a motion for appropriate relief regarding the misdemeanor charge, and based on new evidence the trial court vacated that adjudication. However, the trial court did not vacate the dispositional order, which included paying restitution in the vacated matter. The juvenile on appeal argued that the trial court committed reversible error by not

vacating the order in its entirety. The Court of Appeals recognized that although there are differences between criminal and juvenile trials, past court decisions regarding re-sentencing are "instructive," noting that similar cases in adult court resulted in new sentencing hearings. Therefore, the Court remanded the case to the trial court for new disposition.

- *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 of 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 the 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 grave site without first consulting a therapist. (There was one dissent, which argued that the conditions of wearing the necklace and visiting the grave site 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).